

Statutes & Regulations - Ind. Counsel

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STATUTES AND REGULATIONS

PL 95-521 (S 555) October 26, 1978, "Ethics in Government Act of 1978"

PL 100-191 (HR 2939) December 15, 1987, "Independent Counsel Reauthorization Act of 1987"

PL 103-270 (S 24) June 30, 1994, "Independent Counsel Reauthorization Act of 1994"

28 USCA 591-599, Chapter 40 - Independent Counsel

28 CFR 600, General Powers of Independent Counsel

28 CFR 603, Jurisdiction of the Independent Counsel: In re Madison Guaranty Savings & Loan Association

UNITED STATES PUBLIC LAWS
95th Congress - Second Session
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DATA SUPPLIED BY THE U.S. DEPARTMENT OF JUSTICE. (SEE SCOPE)

Additions and Deletions are not identified in this document.

PL 95-521 (S 555)
OCTOBER 26, 1978

An Act to establish certain Federal agencies, effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States
of America in Congress assembled, That this Act // 2 USC 701 // may be cited as
the "Ethics in Government Act of 1978".

TITLE VI--AMENDMENTS TO TITLE 28, UNITED STATES CODE
SPECIAL PROSECUTOR

Sec. 601. (a) Title 28 of the United States Code // 28 USC 581. // is amended by inserting immediately after chapter 37 the following new chapter:

" Chapter 39.--SPECIAL PROSECUTOR

" Sec. "591. Applicability of provisions of this chapter. "592. Application for appointment of a special prosecutor. "593. Duties of the division of the court. "594. Authority and duties of a special prosecutor. "595. Reporting and congressional oversight. "596. Removal of a special prosecutor; termination of office. "597. Relationship with Department of Justice. "598. Termination of effect of chapter.

" Section 591. // 28 USC 591. // Applicability of provisions of this chapter

"(a) The Attorney General shall conduct an investigation pursuant to the provisions of this chapter whenever the Attorney General receives specific information that any of the persons described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense.

"(b) The persons referred to in subsection (a) of this section are--,

"(1) the President and Vice President;

"(2) any individual serving in a position listed in section 5312 of title 5;

"(3) any individual working in the Executive Office of the President and compensated at a rate not less than the annual rate of basic pay provided for level IV of the Executive Schedule under section 5315 of title 5;

"(4) any individual working in the Department of Justice and compensated at a rate not less than the annual rate of basic pay provided for level III of the Executive Schedule under section 5314 of title 5, any Assistant Attorney

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General, the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

"(5) any individual who held any office or position described in any of paragraphs (1) through (4) of this subsection during the incumbency of the President or during the period the last preceding President held office, if such preceding President was of the same political party as the incumbent President; and

"(6) any officer of the principal national campaign committee seeking the election or reelection of the President.

" Section 592. // 28 USC 592. // Application for appointment of a special prosecutor

"(a) The Attorney General, upon receiving specific information that any of the persons described in section 591(b) of this title has engaged in conduct described in section 591(a) of this title, shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate.

"(b)(1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter is so unsubstantiated that no further investigation or prosecution is warranted, the Attorney General shall so notify the division of the court specified in section 593(a) of this title, and the division of the court shall have no power to appoint a special prosecutor.

"(2) Such notification shall be by memorandum containing a summary of the information received and a summary of the results of any preliminary investigation.

"(3) Such memorandum shall not be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

"(c)(1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter warrants further investigation or prosecution, or if ninety days elapse from the receipt of the information without a determination by the Attorney General that the matter is so unsubstantiated as not to warrant further investigation or prosecution, then the Attorney General shall apply to the division of the court for the appointment of a special prosecutor.

"(2) If--,

"(A) after the filing of a memorandum under subsection (b) of this section, the Attorney General receives additional specific information about the matter to which such memorandum related, and

"(B) the Attorney General determines, after such additional investigation as the Attorney General deems appropriate, that such information warrants further investigation or prosecution,

then the Attorney General shall, not later than ninety days after receiving such additional information, apply to the division of the court for the appointment of a special prosecutor.

"(d)(1) Any application under this chapter shall contain sufficient information to assist the division of the court to select a special prosecutor and to define that special prosecutor's prosecutorial jurisdiction.

"(2) No application or any other documents, materials, or memorandums supplied to the division of the court under this chapter shall be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

"(e) The Attorney General may ask a special prosecutor to accept referral of a matter that relates to a matter within that special prosecutor's prosecutorial jurisdiction.

"(f) The Attorney General's determination under subsection (c) of this section to apply to the division of the court for the appointment of a special prosecutor shall not be reviewable in any court.

" Section 593. // 28 USC 593. // Duties of the division of the court

"(a) The division of the court to which this chapter refers is the division established under section 49 of this title.

"(b) Upon receipt of an application under section 592(c) of this title, the division of the court shall appoint an appropriate special prosecutor and shall define that special prosecutor's prosecutorial

jurisdiction. A special prosecutor's identity and prosecutorial jurisdiction shall be made public upon request of the Attorney General or upon a determination of the court that disclosure of the identity and prosecutorial jurisdiction of such special prosecutor would be in the best interests of justice. In any event the identity and prosecutorial jurisdiction of such prosecutor shall be made public when any indictment is returned or any criminal information is filed.

"(c) The division of the court, upon request of the Attorney General which may be incorporated in an application under this chapter, may expand the prosecutorial jurisdiction of an existing special prosecutor, and such expansion may be in lieu of the appointment of an additional special prosecutor.

"(d) The division of the court may not appoint as a special prosecutor any person who holds or recently held any office of profit or trust under the United States.

"(e) If a vacancy in office arises by reason of the resignation or death of a special prosecutor, the division of the court may appoint a special prosecutor to complete the work of the special prosecutor whose resignation or death caused the vacancy. If a vacancy in office arises by reason of the removal of a special prosecutor, the division of the court may appoint an acting special prosecutor to serve until any judicial review of such removal is completed. Upon the completion of such judicial review, the division of the court shall take appropriate action.

" Section 594. // 28 USC 594. // Authority and duties of a special prosecutor

"(a) Notwithstanding any other provision of law, a special prosecutor appointed under this chapter shall have, with respect to all matters in such special prosecutor's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include--,

"(1) conducting proceedings before grand juries and other investigations;

"(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such special prosecutor deems necessary;

"(3) appealing any decision of a court in any case or proceeding in which such special prosecutor participates in an official capacity;

"(4) reviewing all documentary evidence available from any source;

"(5) determining whether to contest the assertion of any testimonial privilege;

"(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where

appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security:

"(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

"(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1954, and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General; and

"(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case in the name of the United States.

"(b) A special prosecutor appointed under this chapter shall receive compensation at a per diem rate equal to the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5.

"(c) For the purposes of carrying out the duties of the office of special prosecutor, a special prosecutor shall have power to appoint, fix the compensation, and assign the duties, of such employees as such special prosecutor deems necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate provided for GS-18 of the General Schedule under section 5332 of title 5.

"(d) A special prosecutor may request assistance from the Department of Justice, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such special prosecutor's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such special prosecutor's duties.

"(e) A special prosecutor may ask the Attorney General or the division of the court to refer matters related to the special prosecutor's prosecutorial jurisdiction. A special prosecutor may accept referral of a matter by the Attorney General, if the matter relates to a matter within such special prosecutor's prosecutorial jurisdiction as established by the division of the court. If such a referral is accepted, the special prosecutor shall notify the division of the court.

"(f) A special prosecutor shall, to the extent that such special prosecutor deems appropriate, comply with the written policies of the Department of Justice respecting enforcement of the criminal laws.

" Section 595. // 28 USC 595. // Reporting and congressional oversight

"(a) A special prosecutor appointed under this chapter may make public from time to time, and shall send to the Congress statements or reports on the activities of such special prosecutor. These statements and reports shall contain such information as such special prosecutor deems appropriate.

"(b)(1) In addition to any reports made under subsection (a) of this section, and before the termination of a special prosecutor's office under section 596(b) of this title, such special prosecutor shall submit to the division of the court a report under this subsection.

"(2) A report under this subsection shall set forth fully and completely a description of the work of the special prosecutor, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such special prosecutor which was not prosecuted.

"(3) The division of the court may release to the Congress, the public, or to any appropriate person, such portions of a report made under this subsection as the division deems appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a report under this section available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may in the discretion of such division be included as an appendix to such report.

"(c) A special prosecutor shall advise the House of Representatives of any substantial and credible information which such special prosecutor receives that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

"(d) The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any special prosecutor appointed under this chapter, and such special prosecutor shall have the duty to cooperate with the exercise of such oversight jurisdiction.

"(e) A majority of majority party members or a majority of all nonmajority party members of the Committee on the Judiciary of either House of the Congress may request in writing that the Attorney General apply for the appointment of a special prosecutor. Not later than thirty days after the receipt of such a request, or not later than fifteen days after the completion of a preliminary investigation of the matter with respect to which the request is made, whichever is later, the Attorney General shall provide written notification of any action the Attorney General has taken in response to such request and, if no application has been made to the division of the court, why such application was not made. Such written notification shall be provided to the committee on which the persons making the request serve, and shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such notification as will not in the committee's judgment prejudice the rights of any individual.

" Section 596. // 28 USC 596. // Removal of a special prosecutor; termination of office

"(a)(1) A special prosecutor appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for extraordinary impropriety, physical disability, mental incapacity, or any other condition that substantially impairs the performance of such special prosecutor's duties.

"(2) If a special prosecutor is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, delete or postpone publishing any or all of the report. The division of the court may release any or all such report in the same manner as a report released under section 595(b)(3) of this title and under the same limitations as apply to the release of a report under that section.

"(3) A special prosecutor so removed may obtain judicial review of the removal in a civil action commenced before the division of the court and, if such removal was based on error of law or fact, may obtain reinstatement or other appropriate relief. The division of the court shall cause an action to be in every way expedited.

"(b)(1) An office of special prosecutor shall terminate when (A) the special prosecutor notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such special prosecutor or accepted by such special prosecutor under section 594 (e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete

such investigations and prosecutions and (B) the special prosecutor files a report in full compliance with section 595(b) of this title.

"(2) The division of the court, either on its own motion or upon suggestion of the Attorney General, may terminate an office of special prosecutor at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of the special prosecutor or accepted by such special prosecutor under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of termination, the special prosecutor shall file the report required by section 595(b) of this title.

" Section 597. // 28 USC 597. // Relationship with Department of Justice

"(a) Whenever a matter is in the prosecutorial jurisdiction of a special prosecutor or has been accepted by a special prosecutor under section 594(e) of this title, the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d) of this title, and except insofar as such special prosecutor agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

"(b) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which a special prosecutor participates in an official capacity or any appeal of such a case or proceeding.

" Section 598. // 28 USC 598. // Termination of effect of chapter

" This chapter shall cease to have effect five years after the date of the enactment of this chapter, except that this chapter shall continue in effect with respect to then pending matters before a special prosecutor that in the judgment of such special prosecutor require such continuation until that special prosecutor determines such matters have been completed."

(b) The tables of chapters for title 28 of the United States Code and for part II of such title 28 are each amended by inserting immediately after the item relating to chapter 37 the following new item:

"39. Special prosecutor."

(c) There are authorized to be appropriated for each fiscal year such sums as may be necessary, to be held by the Department of Justice as a contingent fund for the use of any special prosecutors appointed under chapter 39 (relating to special prosecutor) of title 28 of the United States Code in the carrying out of functions under such chapter.

ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT SPECIAL PROSECUTORS

Sec. 602. (a) Chapter 3 of title 28 of the United States Code is amended by adding at the end the following:

"Section 49. // 28 USC 49. // Assignment of judges to division to appoint special prosecutors

"(a) Beginning with the two-year period commencing on the date of the enactment of this section, three judges or justices shall be assigned for each successive two-year period to a division of the United States Court of Appeals for the District of Columbia to be the division of the court for the purpose of appointing special prosecutors.

"(b) Except as provided under subsection (f) of this section, assignment to such division of the court shall not be a bar to other judicial assignments during the term of such division.

"(c) In assigning judges or justices to sit on such division of the court, priority shall be given to senior circuit judges and retired justices.

"(d) The Chief Justice of the United States shall designate and assign three circuit court judges or justices, one of whom shall be a judge of the United States Court of Appeals for the District of Columbia, to such division of the court. Not more than one judge or justice or senior or retired judge or justice may be named to such division from a particular court.

"(e) Any vacancy in such division of the court shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to such division were made.

"(f) Except as otherwise provided in chapter 39 of this title, no member of such division of the court who participated in a function conferred on the division under chapter 39 of this title involving a special prosecutor shall be eligible to participate in any judicial proceeding concerning a matter which involves such special prosecutor while such special prosecutor is serving in that office or which involves the exercise of such special prosecutor's official duties, regardless of whether such special prosecutor is still serving in that office."

(b) The table of sections for chapter 3 of title 28 of the United States Code is amended by adding at the end the following item:

"49. Assignment of judges to division to appoint special prosecutors."

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Additions and Deletions are not identified in this document.

PL 100-191 (HR 2939)
December 15, 1987

An Act to amend title 28, United States Code, with respect to the appointment of independent counsel.

Be it enacted by the Senate and House of Representatives of the United States
of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Independent Counsel Reauthorization Act of 1987".

SEC. 2. AMENDMENTS RELATING TO INDEPENDENT COUNSEL.

Chapter 40 of title 28, United States Code, "28 USC 1 note" is amended to read as follows:

"CHAPTER 40 -- INDEPENDENT COUNSEL

"Sec.

"591. Applicability of provisions of this chapter.

"592. Preliminary investigation and application for appointment of an independent counsel.

"593. Duties of the division of the court.

"594. Authority and duties of an independent counsel.

"595. Congressional oversight.

"596. Removal of an independent counsel; termination of office.

"597. Relationship with Department of Justice.

"598. Severability.

"599. Termination of effect of chapter.

"Section 591. "28 USC 591" Applicability of provisions of this chapter

"(a) PRELIMINARY INVESTIGATION WITH RESPECT TO CERTAIN COVERED PERSONS. -- The Attorney General shall conduct a preliminary investigation in accordance with section 592 whenever the Attorney

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General receives information sufficient to constitute grounds to investigate whether any person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

"(b) PERSONS TO WHOM SUBSECTION (a) APPLIES. -- The persons referred to in subsection (a) are --

"(1) the President and Vice President;

"(2) any individual serving in a position listed in section 5312 of title 5;

"(3) any individual working in the Executive Office of the President who is compensated at a rate of pay at or above level II of the Executive Schedule under section 5313 of title 5;

"(4) any Assistant Attorney General and any individual working in the Department of Justice who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5;

"(5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

"(6) any individual who leaves any office or position described in any of paragraphs (1) through (5) of this subsection, during the incumbency of the President under whom such individual served in the office or position plus one year after such incumbency, but in no event longer than a period of three years after the individual leaves the office or position;

"(7) any individual who held an office or position described in any of paragraphs (1) through (5) of this subsection during the incumbency of one President and who continued to hold the office or position for not more than 90 days into the term of the next President, during the 1-year period after the individual leaves the office or position; and

"(8) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of that committee exercising authority at the national level, during the incumbency of the President.

"(c) PRELIMINARY INVESTIGATION WITH RESPECT TO PERSONS NOT LISTED IN SUBSECTION (b). -- The Attorney General may conduct a preliminary investigation in accordance with section 592 if --

"(1) the Attorney General receives information sufficient to constitute grounds to investigate whether any person other than a person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction; and

"(2) the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest.

"(d) EXAMINATION OF INFORMATION TO DETERMINE NEED FOR PRELIMINARY INVESTIGATION. --

"(1) FACTORS TO BE CONSIDERED. -- In determining under subsection (a) or (c) (or section 592(c)(2)) whether grounds to investigate exist, the Attorney General shall consider only --

"(A) the specificity of the information received; and

"(B) the credibility of the source of the information.

"(2) TIME PERIOD FOR MAKING DETERMINATION. -- The Attorney General shall determine whether grounds to investigate exist not later than 15 days after the information is first received. If within that 15-day period the Attorney General determines that the information is not specific or is not from a credible source, then the Attorney General shall close the matter. If within that 15-day period the Attorney General determines that the information is specific and from a credible source, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General is unable to determine, within that 15-day period, whether the information is specific and from a credible source, the Attorney General shall, at the end of that 15-day period, commence a preliminary investigation with respect to that information.

"(e) RECUSAL OF ATTORNEY GENERAL. --

"(1) WHEN RECUSAL IS REQUIRED. -- If information received under this chapter involves the Attorney General or a person with whom the Attorney General has a current or recent personal or financial relationship, the Attorney General shall recuse himself or herself by designating the next most senior officer in the Department of Justice whom that information does not involve and who does not have a current or recent personal or financial relationship with such person to perform the duties assigned under this chapter to the Attorney General with respect to that information.

"(2) REQUIREMENTS FOR RECUSAL DETERMINATION. -- The Attorney General shall, before personally making any other determination under this chapter with respect to information received under this chapter, determine under paragraph (1) whether to recuse himself or herself with respect to that information. A determination to recuse shall be in writing, shall identify the facts considered by the Attorney General, and shall set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division of the court under this chapter with respect to the information involved.

"Section 592. "28 USC 592" Preliminary investigation and application for appointment of an independent counsel

"(a) CONDUCT OF PRELIMINARY INVESTIGATION. --

"(1) IN GENERAL. -- A preliminary investigation conducted under this chapter shall be of such matters as the Attorney General considers appropriate in order to make a determination, under subsection (b) or (c), on whether further investigation is warranted, with respect to each potential violation, or allegation of a violation, of criminal law. The Attorney General shall make such determination not later than 90 days after the preliminary investigation is commenced, except that, in the case of a preliminary investigation commenced after a congressional request under subsection (g), the Attorney General shall make such determination not later than 90 days after the request is received. The Attorney General shall promptly notify the division of the court specified in section 593(a) of the commencement of such preliminary investigation and the date of such commencement.

"(2) LIMITED AUTHORITY OF ATTORNEY GENERAL. -- (A) In conducting preliminary investigations under this chapter, the Attorney General shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpoenas.

"(B)(i) The Attorney General shall not base a determination under this chapter that information with respect to a violation of criminal law by a person is not specific and from a credible source upon a determination that such person lacked the state of mind required for the violation of criminal law.

"(ii) The Attorney General shall not base a determination under this chapter that there are no reasonable grounds to believe that further investigation is warranted, upon a determination that such person lacked the state of mind required for the violation of criminal law involved, unless there is clear and convincing evidence that the

person lacked such state of mind.

"(3) EXTENSION OF TIME FOR PRELIMINARY INVESTIGATION. -- The Attorney General may apply to the division of the court for a single extension, for a period of not more than 60 days, of the 90-day period referred to in paragraph (1). The division of the court may, upon a showing of good cause, grant such extension.

"(b) DETERMINATION THAT FURTHER INVESTIGATION NOT WARRANTED. --

"(1) NOTIFICATION OF DIVISION OF THE COURT. -- If the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are no reasonable grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court, and the division of the court shall have no power to appoint an independent counsel with respect to the matters involved.

"(2) FORM OF NOTIFICATION. -- Such notification shall contain a summary of the information received and a summary of the results of the preliminary investigation.

"(c) DETERMINATION THAT FURTHER INVESTIGATION IS WARRANTED. --

"(1) APPLICATION FOR APPOINTMENT OF INDEPENDENT COUNSEL. -- The Attorney General shall apply to the division of the court for the appointment of an independent counsel if --

"(A) the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are reasonable grounds to believe that further investigation is warranted; or

"(B) the 90-day period referred to in subsection (a)(1), and any extension granted under subsection (a)(3), have elapsed and the Attorney General has not filed a notification with the division of the court under subsection (b)(1).

In determining under this chapter whether reasonable grounds exist to warrant further investigation, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the conduct of criminal investigations.

"(2) RECEIPT OF ADDITIONAL INFORMATION. -- If, after submitting a notification under subsection (b)(1), the Attorney General receives additional information sufficient to constitute grounds to investigate the matters to which such notification related, the Attorney General shall --

"(A) conduct such additional preliminary investigation as the Attorney General considers appropriate for a period of not more than 90 days after the date on which such additional information is received; and

"(B) otherwise comply with the provisions of this section with respect to such additional preliminary investigation to the same extent as any other preliminary investigation under this section.

"(d) CONTENTS OF APPLICATION. -- Any application for the appointment of an independent counsel under this chapter shall contain sufficient information to assist the division of the court in selecting an independent counsel and in defining that independent counsel's prosecutorial jurisdiction so that the independent counsel has adequate authority to fully investigate and prosecute the subject matter and all matters related to that subject matter.

"(e) DISCLOSURE OF INFORMATION. -- Except as otherwise provided in this chapter, no officer or employee of the Department of Justice or an office of independent counsel may, without leave of the division of the court, disclose to any individual outside the Department of Justice or such office any notification, application, or any other document, materials, or memorandum supplied to the division of the court under this chapter. Nothing in this chapter shall be construed as authorizing the withholding of information from the Congress.

"(f) LIMITATION ON JUDICIAL REVIEW. -- The Attorney General's determination under this chapter to apply to the division of the court for the appointment of an independent counsel shall not be reviewable in any court.

"(g) CONGRESSIONAL REQUEST. --

"(1) BY JUDICIARY COMMITTEE OR MEMBERS THEREOF. -- The Committee on the Judiciary of either House of the Congress, or a majority of majority party members or a majority of all nonmajority party members of either such committee, may request in writing that the Attorney General apply for the appointment of an independent counsel.

"(2) REPORT BY ATTORNEY GENERAL PURSUANT TO REQUEST. -- Not later than 30 days after the receipt of a request under paragraph (1), the Attorney General shall submit, to the committee making the request, or to the committee on which the persons making the request serve, a report on whether the Attorney General has begun or will begin a preliminary investigation under this chapter of the matters with respect to which the request is made, in accordance with subsection (a) or (c) of section 591, as the case may be. The report shall set forth the reasons for the Attorney General's decision regarding such preliminary investigation as it relates to each of the matters with respect to which the congressional request is made. If there is such a preliminary investigation, the report shall include the date on which the preliminary investigation began or will begin.

"(3) SUBMISSION OF INFORMATION IN RESPONSE TO CONGRESSIONAL REQUEST. -- At the same time as any notification, application, or any other document, material, or memorandum is supplied to the division of the court pursuant to this section with respect to a preliminary investigation of any matter with respect to which a request is made under paragraph (1), such notification, application, or other document, material, or memorandum shall be supplied to the committee making the request, or to the committee on which the persons making the request serve. If no application for the appointment of an independent counsel is made to the division of the court under this section pursuant to such a preliminary investigation, the Attorney General shall submit a report to that committee stating the reasons why such application was not made, addressing each matter with respect to which the congressional request was made.

"(4) DISCLOSURE OF INFORMATION. -- Any report, notification, application, or other document, material, or memorandum supplied to a committee under this subsection shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such report, notification, application, document, material, or memorandum as will not in the committee's judgment prejudice the rights of any individual.

"Section 593. "28 USC 593" Duties of the division of the court

"(a) REFERENCE TO DIVISION OF THE COURT. -- The division of the court to which this chapter refers is the division established under section 49 of this title.

"(b) APPOINTMENT AND JURISDICTION OF INDEPENDENT COUNSEL. --

"(1) AUTHORITY. -- Upon receipt of an application under section 592(c), the division of the court shall appoint an appropriate independent counsel and shall define that independent counsel's prosecutorial jurisdiction.

"(2) QUALIFICATIONS OF INDEPENDENT COUNSEL. -- The division of the court shall appoint as independent counsel an individual who has appropriate experience and who will conduct the investigation and any prosecution in a prompt, responsible, and cost-effective manner. The division of the court shall seek to appoint as independent counsel an individual who will serve to the extent necessary to complete the investigation and any prosecution without undue delay. The division of the court may not appoint as an independent counsel any person who holds any office of profit or trust under the United States.

"(3) SCOPE OF PROSECUTORIAL JURISDICTION. -- In defining the independent counsel's prosecutorial jurisdiction, the division of the court shall assure that the independent counsel has adequate authority to fully investigate and prosecute the subject matter with respect to which the Attorney General has requested the appointment of the independent counsel, and all matters related to that subject matter. Such jurisdiction shall also include the authority to investigate and prosecute Federal crimes, other than those classified as Class B or C misdemeanors or infractions, that may arise out of the investigation or prosecution of the matter with respect to which the Attorney General's request was made, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.

"(4) DISCLOSURE OF IDENTITY AND PROSECUTORIAL JURISDICTION. -- An independent counsel's identity and prosecutorial jurisdiction (including any expansion under subsection (c)) may not be made public except upon the request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such independent counsel would be in the best interests of justice. In any event, the identity and prosecutorial jurisdiction of such independent counsel shall be made public when any indictment is returned, or any criminal information is filed, pursuant to the independent counsel's investigation.

"(c) EXPANSION OF JURISDICTION. --

"(1) IN GENERAL. -- The division of the court, upon the request of the Attorney General, may expand the prosecutorial jurisdiction of an independent counsel, and such expansion may be in lieu of the appointment of another independent counsel.

"(2) PROCEDURE FOR REQUEST BY INDEPENDENT COUNSEL. -- (A) If the independent counsel discovers or receives information about possible violations of criminal law by persons as provided in section 591, which are not covered by the prosecutorial jurisdiction of the independent counsel, the independent counsel may submit such information to the Attorney General. The Attorney General shall then conduct a preliminary investigation of the information in accordance with the provisions of section 592, except that such preliminary investigation shall not exceed 30 days from the date such information is received. In making the determinations required by section 592, the Attorney General shall give great weight to any recommendations of the independent counsel.

"(B) If the Attorney General determines, after according great weight to the recommendations of the independent counsel, that there are no reasonable grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court and the division of the court shall have no power to expand the jurisdiction of the independent counsel or to appoint another independent counsel with respect to the matters involved.

"(C) If --

"(i) the Attorney General determines that there are reasonable grounds to believe that further investigation is warranted; or

"(ii) the 30-day period referred to in subparagraph (A) elapses without a notification to the division of the court that no further investigation is warranted,

the division of the court shall expand the jurisdiction of the appropriate independent counsel to include the matters involved or shall appoint another independent counsel to investigate such matters.

"(d) RETURN FOR FURTHER EXPLANATION. -- Upon receipt of a notification under section 592 or subsection (c)(2)(B) of this section from the Attorney General that there are no reasonable grounds to believe that further investigation is warranted with respect to information received under this chapter, the division of the court

shall have no authority to overrule this determination but may return the matter to the Attorney General for further explanation of the reasons for such determination.

"(e) VACANCIES. -- If a vacancy in office arises by reason of the resignation, death, or removal of an independent counsel, the division of the court shall appoint an independent counsel to complete the work of the independent counsel whose resignation, death, or removal caused the vacancy, except that in the case of a vacancy arising by reason of the removal of an independent counsel, the division of the court may appoint an acting independent counsel to serve until any judicial review of such removal is completed.

"(f) ATTORNEYS' FEES. --

"(1) AWARD OF FEES. -- Upon the request of an individual who is the subject of an investigation conducted by an independent counsel pursuant to this chapter, the division of the court may, if no indictment is brought against such individual pursuant to that investigation, award reimbursement for those reasonable attorneys' fees incurred by that individual during that investigation which would not have been incurred but for the requirements of this chapter. The division of the court shall notify the Attorney General of any request for attorneys' fees under this subsection.

"(2) EVALUATION OF FEES. -- The division of the court may direct the Attorney General to file a written evaluation of any request for attorneys' fees under this subsection, analyzing for each expense --

"(A) the sufficiency of the documentation;

"(B) the need or justification for the underlying item; and

"(C) the reasonableness of the amount of money requested.

"(g) DISCLOSURE OF INFORMATION. -- The division of the court may, subject to section 594(h)(2), allow the disclosure of any notification, application, or any other document, material, or memorandum supplied to the division of the court under this chapter.

"(h) AMICUS CURIAE BRIEFS. -- When presented with significant legal issues, the division of the court may disclose sufficient information about the issues to permit the filing of timely amicus curiae briefs.

"Section 594. "28 USC 594" Authority and duties of an independent counsel

"(a) AUTHORITIES. -- Notwithstanding any other provision of law, an independent counsel appointed under this chapter shall have, with respect to all matters in such independent counsel's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include --

"(1) conducting proceedings before grand juries and other investigations;

"(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such independent counsel considers necessary;

"(3) appealing any decision of a court in any case or proceeding in which such independent counsel participates in an official capacity;

"(4) reviewing all documentary evidence available from any source;

"(5) determining whether to contest the assertion of any testimonial privilege;

"(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

"(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

"(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General;

"(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case, in the name of the United States; and

"(10) consulting with the United States attorney for the district in which any violation of law with respect to which the independent counsel is appointed was alleged to have occurred.

"(b) COMPENSATION. -- An independent counsel appointed under this chapter shall receive compensation at the per diem rate equal to the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

"(c) ADDITIONAL PERSONNEL. -- For the purposes of carrying out the duties of an office of independent counsel, such independent counsel may appoint, fix the compensation, and assign the duties of such employees as such independent counsel considers necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate of pay payable for GS-18 of the General Schedule under section 5332 of title 5.

"(d) ASSISTANCE OF DEPARTMENT OF JUSTICE. --

"(1) IN CARRYING OUT FUNCTIONS. -- An independent counsel may request assistance from the Department of Justice in carrying out the functions of the independent counsel, and the department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such independent counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such independent counsel's duties.

"(2) PAYMENT OF AND REPORTS ON EXPENDITURES OF INDEPENDENT COUNSEL. -- The Department of Justice shall pay all costs relating to the establishment and operation of any office of independent counsel. The Attorney General shall submit to the Congress, not later than 30 days after the end of each fiscal year, a report on amounts paid during that fiscal year for expenses of investigations and prosecutions by independent counsel. Each such report shall include a statement of all payments made for activities of independent counsel but may not reveal the identity or prosecutorial jurisdiction of any independent counsel which has not been disclosed under section 593(b)(4).

"(e) REFERRAL OF OTHER MATTERS TO AN INDEPENDENT COUNSEL. -- An independent counsel may ask the Attorney General or the division of the court to refer to the independent counsel matters related to the independent counsel's prosecutorial jurisdiction, and the Attorney General or the division of the court, as the case

may be, may refer such matters. If the Attorney General refers a matter to an independent counsel on the Attorney General's own initiative, the independent counsel may accept such referral if the matter relates to the independent counsel's prosecutorial jurisdiction. If the Attorney General refers any matter to the independent counsel pursuant to the independent counsel's request, or if the independent counsel accepts a referral made by the Attorney General on the Attorney General's own initiative, the independent counsel shall so notify the division of the court.

"(f) COMPLIANCE WITH POLICIES OF THE DEPARTMENT OF JUSTICE. -- An independent counsel shall, except where not possible, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws.

"(g) DISMISSAL OF MATTERS. -- The independent counsel shall have full authority to dismiss matters within the independent counsel's prosecutorial jurisdiction without conducting an investigation or at any subsequent time before prosecution, if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

"(h) REPORTS BY INDEPENDENT COUNSEL. --

"(1) REQUIRED REPORTS. -- An independent counsel shall --

"(A) file with the division of the court, with respect to the 6-month period beginning on the date of his or her appointment, and with respect to each 6-month period thereafter until the office of that independent counsel terminates, a report which identifies and explains major expenses, and summarizes all other expenses, incurred by that office during the 6-month period with respect to which the report is filed, and estimates future expenses of that office; and

"(B) before the termination of the independent counsel's office under section 596(b), file a final report with the division of the court, setting forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such independent counsel.

"(2) DISCLOSURE OF INFORMATION IN REPORTS. -- The division of the court may release to the Congress, the public, or any appropriate person, such portions of a report made under this subsection as the division of the court considers appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a final report filed under paragraph (1)(B) available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to such final report.

"(i) INDEPENDENCE FROM DEPARTMENT OF JUSTICE. -- Each independent counsel appointed under this chapter, and the persons appointed by that independent counsel under subsection (c), are separate from and independent of the Department of Justice for purposes of sections 202 through 209 of title 18.

"(j) STANDARDS OF CONDUCT APPLICABLE TO INDEPENDENT COUNSEL, PERSONS SERVING IN THE OFFICE OF AN INDEPENDENT COUNSEL, AND THEIR LAW FIRMS. --

"(1) RESTRICTIONS ON EMPLOYMENT WHILE INDEPENDENT COUNSEL AND APPOINTEES ARE SERVING. -- (A) During the period in which an independent counsel is serving under this chapter --

"(i) such independent counsel, and

"(ii) any person associated with a firm with which such independent counsel is associated, may not represent in any matter any person involved in any investigation or prosecution under this chapter.

"(B) During the period in which any person appointed by an independent counsel under subsection (c) is serving in the office of independent counsel, such person may not represent in any matter any person involved in any investigation or prosecution under this chapter.

"(2) POST EMPLOYMENT RESTRICTIONS ON INDEPENDENT COUNSEL AND APPOINTEES. -- (A) Each independent counsel and each person appointed by that independent counsel under subsection (c) may not, for 3 years following the termination of the service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter if that individual was the subject of an investigation or prosecution under this chapter that was conducted by that independent counsel.

"(B) Each independent counsel and each person appointed by that independent counsel under subsection (c) may not, for 1 year following the termination of the service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter involving any investigation or prosecution under this chapter.

"(3) ONE-YEAR BAN ON REPRESENTATION BY MEMBERS OF FIRMS OF INDEPENDENT COUNSEL. -- Any person who is associated with a firm with which an independent counsel is associated or becomes associated after termination of the service of that independent counsel under this chapter may not, for 1 year following such termination, represent any person in any matter involving any investigation or prosecution under this chapter.

"(4) DEFINITIONS. -- For purposes of this subsection --

"(A) the term 'firm' means a law firm whether organized as a partnership or corporation; and

"(B) a person is 'associated' with a firm if that person is an officer, director, partner, or other member or employee of that firm.

"(k) CUSTODY OF RECORDS OF AN INDEPENDENT COUNSEL. --

"(1) TRANSFER OF RECORDS. -- Upon termination of the office of an independent counsel, that independent counsel shall transfer to the Archivist of the United States all records which have been created or received by that office. Before this transfer, the independent counsel shall clearly identify which of these records are subject to rule 6(e) of the Federal Rules of Criminal Procedure as grand jury materials and which of these records have been classified as national security information. Any records which were compiled by an independent counsel and, upon termination of the independent counsel's office, were stored with the division of the court or elsewhere before the enactment of the Independent Counsel Reauthorization Act of 1987, shall also be transferred to the Archivist of the United States by the division of the court or the person in possession of such records.

"(2) MAINTENANCE, USE, AND DISPOSAL OF RECORDS. -- Records transferred to the Archivist under this chapter shall be maintained, used, and disposed of in accordance with chapters 21, 29, and 33 of title 44.

"(3) ACCESS TO RECORDS. --

"(A) IN GENERAL. -- Subject to paragraph (4), access to the records transferred to the Archivist under this chapter shall be governed by section 552 of title 5.

"(B) ACCESS BY DEPARTMENT OF JUSTICE. -- The Archivist shall, upon written application by the

Attorney General, disclose any such records to the Department of Justice for purposes of an ongoing law enforcement investigation or court proceeding, except that, in the case of grand jury materials, such records shall be so disclosed only by order of the court of jurisdiction under rule 6(e) of the Federal Rules of Criminal Procedure.

"(C) EXCEPTION. -- Notwithstanding any restriction on access imposed by law, the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to the records transferred to the Archivist under this chapter.

"(4) RECORDS PROVIDED BY CONGRESS. -- Records of an investigation conducted by a committee of the House of Representatives or the Senate which are provided to an independent counsel to assist in an investigation or prosecution conducted by that independent counsel --

"(A) shall be maintained as a separate body of records within the records of the independent counsel; and

"(B) shall, after the records have been transferred to the Archivist under this chapter, be made available, except as provided in paragraph (3)(B) and (C), in accordance with the rules governing release of the records of the House of Congress that provided the records to the independent counsel.

Subparagraph (B) shall not apply to those records which have been surrendered pursuant to grand jury or court proceedings.

"Section 595. "28 USC 595" Congressional oversight

"(a) OVERSIGHT OF CONDUCT OF INDEPENDENT COUNSEL. --

"(1) CONGRESSIONAL OVERSIGHT. -- The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any independent counsel appointed under this chapter, and such independent counsel shall have the duty to cooperate with the exercise of such oversight jurisdiction.

"(2) REPORTS TO CONGRESS. -- An independent counsel appointed under this chapter shall submit to the Congress such statements or reports on the activities of such independent counsel as the independent counsel considers appropriate.

"(b) OVERSIGHT OF CONDUCT OF ATTORNEY GENERAL. -- Within 15 days after receiving an inquiry about a particular case under this chapter, which is a matter of public knowledge, from a committee of the Congress with jurisdiction over this chapter, the Attorney General shall provide the following information to that committee with respect to that case:

"(1) When the information about the case was received.

"(2) Whether a preliminary investigation is being conducted, and if so, the date it began.

"(3) Whether an application for the appointment of an independent counsel or a notification that further investigation is not warranted has been filed with the division of the court, and if so, the date of such filing.

"(c) INFORMATION RELATING TO IMPEACHMENT. -- An independent counsel shall advise the House of Representatives of any substantial and credible information which such independent counsel receives, in carrying out the independent counsel's responsibilities under this chapter, that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

"Section 596. "28 USC 596" Removal of an independent counsel; termination of office

"(a) REMOVAL; REPORT ON REMOVAL. --

"(1) GROUNDS FOR REMOVAL. -- An independent counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical disability, mental incapacity, or any other condition that substantially impairs the performance of such independent counsel's duties.

"(2) REPORT TO DIVISION OF THE COURT AND CONGRESS. -- If an independent counsel is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report. The division of the court may release any or all of such report in accordance with section 594(h)(2).

"(3) JUDICIAL REVIEW OF REMOVAL. -- An independent counsel removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia. A member of the division of the court may not hear or determine any such civil action or any appeal of a decision in any such civil action. The independent counsel may be reinstated or granted other appropriate relief by order of the court.

"(b) TERMINATION OF OFFICE. --

"(1) TERMINATION BY ACTION OF INDEPENDENT COUNSEL. -- An office of independent counsel shall terminate when --

"(A) the independent counsel notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions; and

"(B) the independent counsel files a final report in compliance with section 594(h)(1)(B).

"(2) TERMINATION BY DIVISION OF THE COURT. -- The division of the court, either on its own motion or upon the request of the Attorney General, may terminate an office of independent counsel at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of such termination, the independent counsel shall file the final report required by section 594(h)(1)(B).

"(c) AUDITS. -- After the termination of the office of an independent counsel, the Comptroller General shall conduct an audit of the expenditures of that office, and shall submit to the appropriate committees of the Congress a report on the audit.

"Section 597. "28 USC 597" Relationship with Department of Justice

"(a) SUSPENSION OF OTHER INVESTIGATIONS AND PROCEEDINGS. -- Whenever a matter is in the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel under section 594(e), the Department of Justice, the Attorney General, and all other officers and employees of the Department

of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d)(1), and except insofar as such independent counsel agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

"(b) PRESENTATION AS AMICUS CURIAE PERMITTED. -- Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which an independent counsel participates in an official capacity or any appeal of such a case or proceeding.

"Section 598. "28 USC 598" Severability

"If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

"Section 599. "28 USC 599" Termination of effect of chapter

"This chapter shall cease to be effective five years after the date of the enactment of the Independent Counsel Reauthorization Act of 1987, except that this chapter shall continue in effect with respect to then pending matters before an independent counsel that in the judgment of such counsel require such continuation until that independent counsel determines such matters have been completed."

SEC. 3. STATUS OF INDEPENDENT COUNSEL AS A SPECIAL GOVERNMENT EMPLOYEE; FINANCIAL DISCLOSURE REQUIREMENTS.

(a) AMENDMENT TO TITLE 18. -- The first sentence of section 202(a) of title 18, United States Code, is amended --

(1) by striking out "or" after "United States commissioner" and inserting in lieu thereof a comma; and

(2) by striking out the period at the end of the sentence and inserting in lieu thereof the following: ", or, regardless of the number of days of appointment, an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28."

(b) FINANCIAL DISCLOSURE REQUIREMENTS. --

(1) FILING OF REPORTS. -- Section 203(b) of the Ethics in Government Act of 1978 "5 USC app." is amended by striking out "and the Vice President" and inserting in lieu thereof ", the Vice President, and independent counsel and persons appointed by independent counsel under chapter 40 of title 28".

(2) LIMITATION ON PUBLIC DISCLOSURE. -- (A) Section 203(d) of the Ethics in Government Act of 1978 is amended by inserting before the period at the end thereof the following: ", except that any report filed by an independent counsel whose identity has not been disclosed by the division of the court under chapter 40 of title 28, and any report filed by any person appointed by that independent counsel under such chapter, shall not be made available to the public under this title".

(B) Section 205(a) of the Ethics in Government Act of 1978 "5 USC app." is amended by striking out "Each" in the first sentence and inserting in lieu thereof "Except as provided in section 203(d) of this Act, each".

SEC. 4. CLERK OF THE DIVISION OF THE COURT.

Section 49(a) of title 28, United States Code, is amended by adding at the end thereof the following: "The Clerk

of the United States Court of Appeals for the District of Columbia Circuit shall serve as the clerk of such division of the court and shall provide such services as are needed by such division of the court."

SEC. 5. TECHNICAL AMENDMENTS.

(a) TITLE 28, UNITED STATES CODE. -- Section 49(f) of title 28, United States Code, is amended by striking out "a independent" and inserting in lieu thereof "an independent".

(b) CONTINGENCY FUND. -- Section 601(c) of the Ethics in Government Act of 1978 (28 U.S.C. 591 note) is amended by striking out "39 (relating to special prosecutor)" and inserting in lieu thereof "40 (relating to independent counsel)".

SEC. 6. "28 USC 591 note" EFFECTIVE DATE.

(a) IN GENERAL. -- Subject to subsection (b), the amendments made by this Act take effect on the date of the enactment of this Act.

(b) PENDING PROCEEDINGS. -- With respect to any proceeding under chapter 39 of title 28, United States Code (before the redesignation of such chapter as chapter 40 by section 144(g) of Public Law 99-554), or under chapter 40 of such title (after such redesignation), which is pending on the date of the enactment of this Act, the following shall apply:

(1) Except as provided in paragraphs (2) and (3), the provisions of chapter 40 of such title as in effect on the day before such date of enactment shall, in lieu of the amendments made by this Act, continue to apply on or after such date to such proceeding until such proceeding is terminated in accordance with such chapter.

(2) The following provisions shall apply to such proceeding on or after such date of enactment:

(A) Section 593(f) of title 28, United States Code, as amended by section 2 of this Act, relating to the award of attorneys' fees.

(B) Section 594(d)(2) of such title, as added by section 2 of this Act, to the extent that such section 594(d)(2) relates to reports by the Attorney General on expenditures by independent counsel, except that the first such report shall be made only with respect to expenditures on or after the date of the enactment of this Act.

(C) Section 594(h)(1)(A) of such title, as added by section 2 of this Act, relating to reports by independent counsel, except that the 6-month periods described in such section 594(h)(1)(A) shall be calculated from the date of the enactment of this Act.

(D) Section 594(i) of such title, as added by section 2 of this Act, relating to the independence of the office of independent counsel for certain purposes.

(E) Section 594(k) of such title, as added by section 2 of this Act, relating to custody of records of independent counsel.

(F) Section 596(a)(3) of such title, as amended by section 2 of this Act, relating to judicial review of the removal of an independent counsel from office.

(G) Section 596(c) of such title, as added by section 2 of this Act, relating to audits of expenditures of independent counsel.

(H) The amendments made by section 3 of this Act, relating to the status of independent counsel and their

appointees as special government employees and to their financial disclosure requirements.

(3) Section 594(j) of title 28, United States Code, as added by section 2 of this Act, relating to certain standards of conduct shall, 90 days after the date of the enactment of this Act, apply to a pending proceeding described in this subsection.

Approved December 15, 1987.

LEGISLATIVE HISTORY -- H.R. 2939 (S. 1293):

HOUSE REPORTS: No. 100-316 (Comm. on the Judiciary).

SENATE REPORTS: No. 100-123 accompanying S. 1293 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 133 (1987): Oct. 16, S. 1293 considered in Senate. Oct. 21, H.R. 2939 considered and passed House. Nov. 3, considered and passed Senate, amended, in lieu of S. 1293. Nov. 20, Senate agreed to conference report. Dec. 2, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 23 (1987): Dec. 15, Presidential statement.

PL 100-191, 1987 HR 2939

END OF DOCUMENT

UNITED STATES PUBLIC LAWS
103rd Congress - Second Session
Convening January 25, 1994

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Additions and Deletions are not identified in this document.

For Legislative History of Act, see LH database or Report for
this Public Law in U.S.C.C. & A.N. Legislative History section.

PL 103-270 (S 24)
June 30, 1994

INDEPENDENT COUNSEL REAUTHORIZATION ACT OF 1994

AN ACT to reauthorize the independent counsel law for an additional 5 years, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States
of America in Congress assembled,

< < 28 USCA § 1 NOTE > >

SECTION 1. SHORT TITLE.

This Act may be cited as the "Independent Counsel Reauthorization Act of 1994".

< < 28 USCA § 599 > >

SEC. 2. FIVE-YEAR REAUTHORIZATION.

Section 599 of title 28, United States Code, is amended by striking "1987" and inserting "1994".

SEC. 3. ADDED CONTROLS.

< < 28 USCA § 594 > >

(a) COST CONTROLS AND ADMINISTRATIVE SUPPORT.--Section 594 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(I) COST CONTROLS AND ADMINISTRATIVE SUPPORT.--

"(1) COST CONTROLS.--

"(A) IN GENERAL.--An independent counsel shall--

"(i) conduct all activities with due regard for expense;

"(ii) authorize only reasonable and lawful expenditures; and

"(iii) promptly, upon taking office, assign to a specific employee the duty of certifying that expenditures of the independent counsel are reasonable and made in accordance with law.

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"(B) LIABILITY FOR INVALID CERTIFICATION.--An employee making a certification under subparagraph (A)(iii) shall be liable for an invalid certification to the same extent as a certifying official certifying a voucher is liable under section 3528 of title 31.

"(C) DEPARTMENT OF JUSTICE POLICIES.--An independent counsel shall comply with the established policies of the Department of Justice respecting expenditures of funds, except to the extent that compliance would be inconsistent with the purposes of this chapter.

"(2) ADMINISTRATIVE SUPPORT.--The Director of the Administrative Office of the United States Courts shall provide administrative support and guidance to each independent counsel. No officer or employee of the Administrative Office of the United States Courts shall disclose information related *733 to an independent counsel's expenditures, personnel, or administrative acts or arrangements without the authorization of the independent counsel.

"(3) OFFICE SPACE.--The Administrator of General Services, in consultation with the Director of the Administrative Office of the United States Courts, shall promptly provide appropriate office space for each independent counsel. Such office space shall be within a Federal building unless the Administrator of General Services determines that other arrangements would cost less. Until such office space is provided, the Administrative Office of the United States Courts shall provide newly appointed independent counsels immediately upon appointment with appropriate, temporary office space, equipment, and supplies."

(b) INDEPENDENT COUNSEL PER DIEM EXPENSES.--Section 594(b) of title 28, United States Code, is amended--

(1) by striking "(b) COMPENSATION.--An" and inserting the following:

"(b) COMPENSATION.--

"(1) IN GENERAL.--An"; and

(2) by adding at the end the following new paragraphs:

"(2) TRAVEL EXPENSES.--Except as provided in paragraph (3), an independent counsel and persons appointed under subsection (c) shall be entitled to the payment of travel expenses as provided by subchapter I of chapter 57 of title 5, United States Code, including travel, per diem, and subsistence expenses in accordance with section 5703 of title 5.

"(3) TRAVEL TO PRIMARY OFFICE.--

"(A) IN GENERAL.--After 1 year of service under this chapter, an independent counsel and persons appointed under subsection (c) shall not be entitled to the payment of travel, per diem, or subsistence expenses under subchapter I of chapter 57 of title 5, United States Code, for the purpose of commuting to or from the city in which the primary office of the independent counsel or person is located. The 1-year period may be extended by 6 months if the employee assigned duties under subsection (I)(1)(A)(iii) certifies that the payment is in the public interest to carry out the purposes of this chapter.

"(B) RELEVANT FACTORS.--In making any certification under this paragraph with respect to travel and subsistence expenses of an independent counsel or person appointed under subsection (c), such employee shall consider, among other relevant factors--

"(i) the cost to the Government of reimbursing such travel and subsistence expenses;

"(ii) the period of time for which the independent counsel anticipates that the activities of the independent counsel or person, as the case may be, will continue;

"(iii) the personal and financial burdens on the independent counsel or person, as the case may be, of relocating so that such travel and subsistence expenses would not be incurred; and

"(iv) the burdens associated with appointing a new independent counsel, or appointing another person under subsection (c), to replace the individual involved who is unable or unwilling to so relocate.".

***734 (c) INDEPENDENT COUNSEL EMPLOYEE PAY COMPARABILITY.**--Section 594(c) of title 28, United States Code, is amended by striking the last sentence and inserting: "Such employees shall be compensated at levels not to exceed those payable for comparable positions in the Office of United States Attorney for the District of Columbia under sections 548 and 550, but in no event shall any such employee be compensated at a rate greater than the rate of basic pay payable for level ES-4 of the Senior Executive Service Schedule under section 5382 of title 5, as adjusted for the District of Columbia under section 5304 of that title regardless of the locality in which an employee is employed.".

(d) **ETHICS ENFORCEMENT.**--Section 594(j) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(5) **ENFORCEMENT.**--The Attorney General and the Director of the Office of Government Ethics have authority to enforce compliance with this subsection.".

(e) **COMPLIANCE WITH POLICIES OF THE DEPARTMENT OF JUSTICE.**--Section 594(f) of title 28, United States Code, is amended--

(1) by striking "shall, except where not possible, comply" and inserting "shall, except to the extent that to do so would be inconsistent with the purposes of this chapter, comply";

(2) by adding at the end the following: "To determine these policies and policies under subsection (l)(1)(B), the independent counsel shall, except to the extent that doing so would be inconsistent with the purposes of this chapter, consult with the Department of Justice.";

(3) by striking "An independent" and inserting the following:

"(1) **IN GENERAL.**--An independent"; and

(4) by adding at the end the following new paragraph:

"(2) **NATIONAL SECURITY.**--An independent counsel shall comply with guidelines and procedures used by the Department in the handling and use of classified material.".

(f) **PUBLICATION OF REPORTS.**--Section 594(h) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(3) **PUBLICATION OF REPORTS.**--At the request of an independent counsel, the Public Printer shall cause to be printed any report previously released to the public under paragraph (2). The independent counsel shall certify the number of copies necessary for the public, and the Public Printer shall place the cost of the required number to the debit of such independent counsel. Additional copies shall be made available to the public through the depository library program and Superintendent of Documents sales program pursuant to sections 1702 and 1903 of title 44.".

< < 28 USCA § 595 > >

(g) ANNUAL REPORTS TO CONGRESS.--Section 595(a)(2) of title 28, United States Code, is amended by striking "such statements" and all that follows through "appropriate" and inserting "annually a report on the activities of the independent counsel, including a description of the progress of any investigation or prosecution conducted by the independent counsel. Such report may omit any matter that in the judgment of the independent counsel should be kept confidential, but shall provide information adequate to justify the expenditures that the office of the independent counsel has made".

< < 28 USCA § 596 > >

*735 (h) PERIODIC REAPPOINTMENT OF INDEPENDENT COUNSEL.--Section 596(b)(2) of title 28, United States Code, is amended by adding at the end the following new sentence: "If the Attorney General has not made a request under this paragraph, the division of the court shall determine on its own motion whether termination is appropriate under this paragraph no later than 2 years after the appointment of an independent counsel, at the end of the succeeding 2-year period, and thereafter at the end of each succeeding 1-year period."

(i) AUDITS BY THE COMPTROLLER GENERAL.--Section 596(c) of title 28, United States Code, is amended to read as follows:

"(c) AUDITS.--(1) On or before June 30 of each year, an independent counsel shall prepare a statement of expenditures for the 6 months that ended on the immediately preceding March 31. On or before December 31 of each year, an independent counsel shall prepare a statement of expenditures for the fiscal year that ended on the immediately preceding September 30. An independent counsel whose office is terminated prior to the end of the fiscal year shall prepare a statement of expenditures on or before the date that is 90 days after the date on which the office is terminated.

"(2) The Comptroller General shall--

"(A) conduct a financial review of a mid-year statement and a financial audit of a year-end statement and statement on termination; and

"(B) report the results to the Committee on the Judiciary, Committee on Governmental Affairs, and Committee on Appropriations of the Senate and the Committee on the Judiciary, Committee on Government Operations, and Committee on Appropriations of the House of Representatives not later than 90 days following the submission of each such statement."

< < 28 USCA § 591 > >

(j) THRESHOLD INQUIRY.--Section 591(d)(2) of title 28, United States Code, is amended by striking "15" each time it appears and inserting "30".

(k) RECUSAL.--Section 591(e) of title 28, United States Code, is amended to read as follows:

"(e) RECUSAL OF ATTORNEY GENERAL.--

"(1) WHEN RECUSAL IS REQUIRED.--(A) If information received under this chapter involves the Attorney General, the next most senior official in the Department of Justice who is not also recused shall perform the duties assigned under this chapter to the Attorney General.

"(B) If information received under this chapter involves a person with whom the Attorney General has a personal or financial relationship, the Attorney General shall recuse himself or herself by designating the next most senior

official in the Department of Justice who is not also recused to perform the duties assigned under this chapter to the Attorney General.

"(2) REQUIREMENTS FOR RECUSAL DETERMINATION.--Before personally making any other determination under this chapter with respect to information received under this chapter, the Attorney General shall determine under paragraph (1)(B) whether recusal is necessary. The Attorney General shall set forth this determination in writing, identify the facts considered by the Attorney General, and set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division *736 of the court under this chapter with respect to such information."

< < 28 USCA § 592 > >

(l) DISCLOSURE OF INFORMATION.--Section 592(e) of title 28, United States Code, is amended by inserting after "Except as otherwise provided in this chapter" the following: "or as is deemed necessary for law enforcement purposes".

< < 28 USCA § 594 > >

(m) CLARIFICATION OF AUTHORITY TO USE DEPARTMENT OF JUSTICE PERSONNEL.-- Section 594(d)(1) of title 28, United States Code, is amended by adding at the end the following: "At the request of an independent counsel, prosecutors, administrative personnel, and other employees of the Department of Justice may be detailed to the staff of the independent counsel."

< < 28 USCA § 593 > >

(n) ATTORNEYS' FEES.--Section 593(f) of title 28, United States Code, is amended--

(1) in the last sentence of paragraph (1) by inserting before "Attorney General" the following: "the independent counsel who conducted the investigation and"; and

(2) in paragraph (2)--

(A) by striking "may direct" and inserting "shall direct such independent counsel and"; and

(B) by striking all after "subsection," and inserting the following: "addressing--

"(A) the sufficiency of the documentation;

"(B) the need or justification for the underlying item;

"(C) whether the underlying item would have been incurred but for the requirements of this chapter; and

"(D) the reasonableness of the amount of money requested."

< < 28 USCA § 594 > >

(o) FINAL REPORT.--Section 594(h)(1)(B) of title 28, United States Code, is amended by striking ", and the reasons" and all that follows through the period and inserting a period.

< < 28 USCA § 591 > >

SEC. 4. MEMBERS OF CONGRESS.

(a) DISCRETIONARY AUTHORITY.--Section 591(c) of title 28, United States Code, is amended to read as follows:

"(c) PRELIMINARY INVESTIGATION WITH RESPECT TO OTHER PERSONS.--

"(1) IN GENERAL.--When the Attorney General determines that an investigation or prosecution of a person by the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether that person may have violated Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

"(2) MEMBERS OF CONGRESS.--When the Attorney General determines that it would be in the public interest, the Attorney General may conduct a preliminary investigation in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether a Member of Congress may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction."

(b) POSTEMPLOYMENT COVERAGE.--Section 591(b) of title 28, United States Code, is amended--

(1) by striking paragraphs (6) and (7);

*737 (2) by redesignating paragraph (8) as paragraph (6), and, at the end of that paragraph, striking the period and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(7) any individual who held an office or position described in paragraph (1), (2), (3), (4), or (5) for 1 year after leaving the office or position."

< < 28 USCA § 596 > >

SEC. 5. GROUNDS FOR REMOVAL.

Section 596(a)(1) of title 28, United States Code, is amended by striking "physical disability, mental incapacity" and inserting "physical or mental disability (if not prohibited by law protecting persons from discrimination on the basis of such a disability)".

< < 3 USCA § 113 NOTE > >

SEC. 6. REPORT ON WHITE HOUSE OFFICE PERSONNEL.

(a) SUBMISSION OF REPORT.--On July 1 of each year, the President shall submit a report described in subsection (b) to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(b) CONTENTS.--A report under subsection (a) shall, except as provided in subsection (c), include--

(1) a list of each individual--

(A) employed by the White House Office; or

(B) detailed to the White House Office; and

(2) with regard to each individual described in paragraph (1), the individual's--

(A) name;

(B) position and title; and

(C) annual rate of pay.

(c) **EXCLUSION FROM REPORT.**--If the President determines that disclosure of any item of information described in subsection (b) with respect to any particular individual would not be in the interest of the national defense or foreign policy of the United States--

(1) a report under subsection (a) shall--

(A) exclude such information with respect to that individual; and

(B) include a statement of the number of individuals with respect to whom such information has been excluded; and

(2) at the request of the Committee on Governmental Affairs of the Senate or the Committee on Government Operations of the House of Representatives, the information that was excluded from the report shall be made available for inspection by such committee.

< < 28 USCA §§ 49 nt, 591 NOTE, 592 nt, 593 nt, 594 nt, 595 nt, 596 nt, 599
nt > >

SEC. 7. TRANSITION PROVISIONS.

(a) **IN GENERAL.**--Except as provided in this section, the amendments made by this Act shall apply with respect to independent counsels appointed before, on, or after the date of enactment of this Act.

(b) **ASSIGNMENT OF EMPLOYEE TO CERTIFY EXPENDITURES.**--An independent counsel appointed prior to the date of enactment of this Act shall assign to an employee the duty of certifying expenditures, as required by section 594(l) of title 28, United States Code, as added by section 3(a), by the date that is 30 days after the date of enactment of this Act.

(c) **OFFICE SPACE.**--The Administrator of General Services, in applying section 594(l)(3) of title 28, United States Code, as added *738 by section 3(a), to determine whether the office of an independent counsel appointed prior to the date of enactment of this Act should be moved to a Federal building, shall take into account the moving, legal, and other expenses that might arise if the office were moved.

(d) **TRAVEL AND SUBSISTENCE EXPENSES.**--For purposes of the restrictions on reimbursement of travel and subsistence expenses of an independent counsel and employees of an office of independent counsel contained in paragraph (3) of section 594(b) of title 28, United States Code, as amended by section 3(b), as applied to the office of an independent counsel appointed before the date of enactment of this Act, the 1-year service period shall begin on the date of enactment of this Act.

(e) **RATES OF COMPENSATION.**--The limitation on rates of compensation of employees of an office of independent counsel contained in the last sentence of section 594(c) of title 28, United States Code, as amended by section 3(c), shall not be applied to cause a reduction in the rate of compensation of an employee appointed before the date of enactment of this Act.

(f) PERIODIC REAPPOINTMENT.--The determinations by the division of the court contained in the last sentence of section 596(b)(2) of title 28, United States Code, as amended by section 3(h), shall, for the office of an independent counsel appointed before the date of enactment of this Act, be required no later than 1 year after the date of enactment of this Act and at the end of each succeeding 1-year period.

(g) REPORTING REQUIREMENTS.--No amendment made by this Act that establishes or modifies a requirement that any person submit a report to any other person with respect to an activity occurring during any time period shall be construed to require that a report submitted prior to the date of enactment of this Act, with respect to that time period be supplemented to include information with respect to such activity.

(h) REGULATORY INDEPENDENT COUNSEL.--Notwithstanding the restriction in section 593(b)(2) of title 28, United States Code, the division of the court described in section 49 of that title may appoint as an independent counsel any individual who, on the date of enactment of this Act, is serving as a regulatory independent counsel under parts 600 and 603 of title 28, Code of Federal Regulations. If such an individual is so appointed, such an independent counsel shall comply with chapter 40 of title 28, United States Code, as amended by this Act, in the same manner and to the same extent as an independent counsel appointed before the date of enactment of this Act is required to comply with that chapter, except that subsection (f) of this section shall not apply to such an independent counsel.

*739 (i) WHITE HOUSE PERSONNEL REPORT.--Section 6 shall take effect on January 1, 1995.

Approved June 30, 1994.

PL 103-270, 1994 S 24

END OF DOCUMENT

PART 600—GENERAL POWERS OF INDEPENDENT COUNSEL

Sec.

600.1 Authority and duties of an Independent Counsel.

600.2 Reporting and congressional oversight.

600.3 Removal of an Independent Counsel; termination of office.

600.4 Relationship with components of the Department of Justice.

600.5 Savings provision; severability.

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515, 543; Article II of the U.S. Constitution.

SOURCE: 52 FR 7271, Mar. 10, 1987, unless otherwise noted.

§ 600.1 Authority and duties of an Independent Counsel.

(a) An Office of Independent Counsel shall be under the direction of an Independent Counsel appointed by the Attorney General. An Independent Counsel shall have, with respect to all matters in his prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18 of the U.S. Code. Such investigative and prosecutorial functions and powers shall include—

(1) Conducting proceedings before grand juries and other investigations;

(2) Participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such Independent Counsel deems necessary;

(3) Appealing any decision of a court in any case or proceeding in which such Independent Counsel participates in an official capacity;

(4) Reviewing all documentary evidence available from any source;

(5) Determining whether to contest the assertion of any testimonial privilege;

(6) Receiving appropriate national security clearances and, if necessary, contesting in court (including, where

appropriate, participating in *in camera* proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

(7) Making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18 of the U.S. Code, exercising the authority vested in a United States or the Attorney General;

(8) Inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1954, and the regulations issued thereunder, exercising the powers vested in a U.S. Attorney or the Attorney General; and

(9) Initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing information, and handling all aspects of any case in the name of the United States; and

(10) Consulting with the U.S. Attorney for the district in which the violation was alleged to have occurred.

(b) An Independent Counsel appointed under this chapter shall receive compensation at a rate not to exceed the annual or per diem rate equal to the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5 of the U.S. Code. This paragraph shall not be construed to authorize the payment of any compensation in addition to that paid under subsection (b) of section 594 of title 28 of the U.S. Code.

(c) For the purposes of carrying out the duties of the Office of Independent Counsel, an Independent Counsel shall have the full power of the Attorney General to appoint (other than in the Senior Executive Service), fix the compensation and assign the duties of such employees as the Independent Counsel deems necessary. This paragraph shall not be construed to authorize the payment of any compensation in addition to that paid under subsection (c) of section 595 of title 28 of the U.S. Code.

(d) An Independent Counsel may request assistance from the Department

of Justice, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within the Independent Counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform the Independent Counsel's duties.

(e) An Independent Counsel may ask the Attorney General to refer matters related to the Independent Counsel's prosecutorial jurisdiction. An Independent Counsel may accept referral of a matter by the Attorney General, if the matter relates to a matter within the Independent Counsel's prosecutorial jurisdiction as established by this chapter. If such a referral is accepted, an Independent Counsel shall notify the division of the U.S. Court of Appeals for the District of Columbia referred to in section 49 of title 28 of the U.S. Code, if such court exists at that time.

(f) An Independent Counsel shall, except where not possible, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws.

(g) An Independent Counsel shall have full authority to dismiss matters within his prosecutorial jurisdiction without conducting an investigation or at any subsequent time prior to prosecution if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

[52 FR 7271, Mar. 10, 1987, as amended at 59 FR 5322, Feb. 4, 1994]

§ 600.2 Reporting and congressional oversight.

(a) An Independent Counsel appointed under this chapter may make public from time to time, and shall send to the Congress statements or reports on the activities of the Independent Counsel. These statements and reports shall contain such information as the Independent Counsel deems appropriate.

(b)(1) In addition to any reports made under paragraph (a) of this section, and before the termination of the Independent Counsel's office under this chapter,

such Independent Counsel shall submit to the division of the U.S. Court of Appeals for the District of Columbia referred to in section 49 of title 28 of the U.S. Code, if such court exists at that time, a report under this section.

(2) A report under this subsection shall set forth fully and completely a description of the work of the Independent Counsel, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of the Independent Counsel which was not prosecuted.

(3) Unless prohibited by applicable law, an Independent Counsel may release to the Congress, the public, or to any appropriate person, such portions of a report made under this subsection as he deems appropriate.

(c) An Independent Counsel shall advise the House of Representatives of any substantial and credible information which such Independent Counsel receives that may constitute grounds for an impeachment. Nothing in this chapter shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

(d) Nothing in this chapter shall prevent the appropriate committees of the Congress from exercising oversight jurisdiction with respect to the official conduct of any Independent Counsel appointed under this chapter, and such Independent Counsel shall have the duty to cooperate with the exercise of such oversight jurisdiction.

§ 600.3 Removal of an Independent Counsel; termination of office.

(a)(1) An Independent Counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the Independent Counsel's duties.

(2) If an Independent Counsel is removed from office, the Attorney General shall promptly submit to the division of the U.S. Court of Appeals for the District of Columbia referred to in section 49 of title 28 of the U.S. Code, if

such court exists at that time, and to the Committees on the Judiciary of the Senate and the House of Representatives, a report specifying the facts found and the ultimate grounds for such removal. The Attorney General will not object to the making available of the report to the public by the Committees or the division of the Court.

(3) To the extent otherwise permitted by law, an Independent Counsel so removed may obtain judicial review of the removal in a civil action commenced before the division of the U.S. Court of Appeals for the District of Columbia referred to in section 49 of title 28 of the U.S. Code, if such court exists at that time, or any court of competent jurisdiction and, if such removal was based on error of law or fact, may obtain reinstatement or other appropriate relief; provided that an Independent Counsel originally appointed by court order shall have such rights of review as provided by said order and by section 596(a)(3) of title 28 of the U.S. Code.

(b) An office of Independent Counsel shall terminate when (1) the Independent Counsel notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of the Independent Counsel or accepted by such Independent Counsel under § 600.1(e) of this chapter, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions and (2) the Independent Counsel files a report in full compliance with § 600.2(b) of this chapter.

§ 600.4 Relationship with components of the Department of Justice.

(a) Whenever a matter is in the prosecutorial jurisdiction of an Independent Counsel or has been accepted by an Independent Counsel under § 600.1(e) of this chapter, the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by § 600.1(d) of this chapter, and except insofar as such Independent Counsel agrees in writing that such in-

vestigation or proceedings may be continued by the Department of Justice.

(b) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which an Independent Counsel participates in an official capacity or any appeal of such a case or proceeding.

§ 600.5 Savings provision; severability.

(a) Nothing in this chapter is intended to modify or impair any of the provisions of the Ethics in Government Act relating to Independent Counsel (sections 591-598 of title 28 of the U.S. Code), or of any order issued thereunder.

(b) If any provision of the Ethics in Government Act relating to Independent Counsel (sections 591-598 of title 28 of the U.S. Code) or any provision of this chapter is held invalid for any reason, such invalidity shall not affect any other provision of this chapter, it being intended that each provision of this chapter shall be severable from the Act and from each other provision.

PART 601—JURISDICTION OF THE INDEPENDENT COUNSEL: IRAN/CONTRA

AUTHORITY: 28 U.S.C. 509, 510, and 515; 5 U.S.C. 301; Article II of the U.S. Constitution.

§ 601.1 Jurisdiction of the Independent Counsel: Iran/Contra.

(a) *The Independent Counsel.* Iran/Contra has jurisdiction to investigate to the maximum extent authorized by part 600 of this chapter whether any person or group of persons currently described in section 591 of title 28 of the U.S. Code, including Lieutenant Colonel Oliver L. North, other United States Government officials, or other individuals or organizations acting in concert with Lt. Col. North, or with other U.S. Government officials, has committed a violation of any federal criminal law, as referred to in section 591 of title 28 of the U.S. Code, relating in any way to:

(1) The direct or indirect sale, shipment, or transfer since in or about 1984

entities involved in any of the foregoing events or transactions that Independent Counsel believes constitute a Federal offense and that there is reasonable cause to believe that the admissible evidence probably will be sufficient to obtain and sustain a conviction (28 U.S.C. 594(f)) of any Federal criminal law (other than a violation constituting a Class B or C misdemeanor, or an infraction, or a petty offense) arising out of such events, including such persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any criminal offense related to the prosecutorial jurisdiction of the Independent Counsel as herein established.

(c) The Independent Counsel: In re Franklyn C. Nofziger shall have jurisdiction to investigate to the maximum extent authorized by title 28 U.S.C. 594, whether the conduct of Edwin Meese III specified in this section constituted a violation of any federal criminal law, as referred to in 28 U.S.C. 591, and more specifically whether the federal conflict of interest laws, 18 U.S.C. 201-211, or any other provision of the federal criminal law, was violated by Mr. Meese's relationship or dealings at any time from 1981 to the present with any of the following: Welbilt Electronic Die Corporation/Wedtech Corporation (including any of its contracts with the U.S. Government, or efforts to obtain same); Franklyn C. Nofziger; E. Robert Wallach; W. Franklyn Chinn; and/or Financial Management International, Inc.

(d) The Independent Counsel: In re Franklyn C. Nofziger shall have jurisdiction and authority to investigate other allegations and evidence of violation of any federal criminal law by Edwin Meese III developed during the Independent Counsel's investigation referred to in paragraph (c) of this section, and connected with or arising out of that investigation, and to seek indictments and to prosecute any persons or entities involved in any of the foregoing events or transactions that Independent Counsel believes constitute a Federal offense and that there is reasonable cause to believe that the admissible evidence probably will be sufficient to obtain and sustain a conviction (28 U.S.C. 594(f)) of any federal

criminal law (other than a violation constituting a Class B or C misdemeanor, or an infraction, or a petty offense) arising out of such events, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any criminal offense related to the prosecutorial jurisdiction of the Independent Counsel as herein established.

(e) The Independent Counsel shall have prosecutorial jurisdiction to initiate and conduct prosecutions in any court of competent jurisdiction for any violation of 28 U.S.C. 1826, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of the Federal criminal laws, in connection with the investigation authorized by this regulation, and shall have all the powers and authority provided by the Ethics in Government Act of 1978, as amended, and specifically by 28 U.S.C. 594.

[52 FR 22439, June 12, 1987, as amended at 52 FR 22439, June 12, 1987; 52 FR 35544, Sept. 22, 1987]

PART 603—JURISDICTION OF THE INDEPENDENT COUNSEL: IN RE MADISON GUARANTY SAVINGS & LOAN ASSOCIATION

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510, 543, unless otherwise noted.

§ 603.1 Jurisdiction of the Independent Counsel

(a) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate to the maximum extent authorized by part 600 of this chapter whether any individuals or entities have committed a violation of any federal criminal or civil law relating in any way to President William Jefferson Clinton's or Mrs. Hillary Rodham Clinton's relationships with:

- (1) Madison Guaranty Savings & Loan Association;
- (2) Whitewater Development Corporation; or
- (3) Capital Management Services.

(b) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and

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authority to investigate other allegations or evidence of violation of any federal criminal or civil law by any person or entity developed during the Independent Counsel's investigation referred to above, and connected with or arising out of that investigation.

(c) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate any violation of section 1826 of title 28 of the U.S. Code, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of federal law, in connection with any investigation of the matters de-

scribed in paragraph (a) or (b) of this section.

(d) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to seek indictments and to prosecute, or to bring civil actions against, any persons or entities involved in any of the matters referred to in paragraph (a), (b), or (c) of this section who are reasonably believed to have committed a violation of any federal criminal or civil law arising out of such matters, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any federal offense.

[59 FR 5322, Feb. 4, 1994]

CHAPTER 40—INDEPENDENT COUNSEL

Sec.

- 591. Applicability of provisions of this chapter.
- 592. Preliminary investigation and application for appointment of an independent counsel.
- 593. Duties of the division of the court.
- 594. Authority and duties of an independent counsel.
- 595. Congressional oversight.
- 596. Removal of an independent counsel; termination of office.
- 597. Relationship with Department of Justice.
- 598. Severability.
- 599. Termination of effect of chapter.

HISTORICAL AND STATUTORY NOTES

Amendments

1987 Amendments. Pub.L. 100-191, § 2, Dec. 15, 1987, 101 Stat. 1293, in item 592 substituted "Preliminary investigation and application for appointment of an independent counsel" for "Application for appointment of a independent counsel", in item 594 substituted "an independent counsel" for "a independent counsel", in item 595 substituted "Congressional oversight" for "Reporting and congressional oversight", in item 596 substituted "an independent counsel" for "a independent counsel", in item 598 substituted "Severability" for "Termination of effect of chapter", and added item 599.

1986 Amendments. Chapter Heading. Pub.L. 99-554, Title I, § 144(g)(1), Oct. 27, 1986, 100 Stat. 3097, substituted "40" for "39".

1983 Amendments. Chapter Heading. Pub.L. 97-409, § 2(a)(1)(A), Jan. 3, 1983, 96 Stat. 2039, substituted "independent counsel" for "special prosecutor".

Analysis. Pub.L. 97-409, § 2(a)(1)(A), Jan. 3, 1983, 96 Stat. 2039, substituted "independent counsel" for "special prosecutor" in items 592, 594, and 596.

CROSS REFERENCES

Independent counsel appointed under this chapter included in term "special government employee" for purposes of Chapter 11, Bribery, Graft and Conflict of Interest, see 18 USCA § 202.

Independent counsel serving under this chapter not eligible to participate in any judicial proceedings which concerns a matter involving such independent counsel, see 28 USCA § 49.

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§ 591. Applicability of provisions of this chapter

(a) Preliminary investigation with respect to certain covered persons.—The Attorney General shall conduct a preliminary investigation in accordance with section 592 whenever the Attorney General receives information sufficient to constitute grounds to investigate whether any person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

(b) Persons to whom subsection (a) applies.—The persons referred to in subsection (a) are—

- (1) the President and Vice President;
- (2) any individual serving in a position listed in section 5312 of title 5;
- (3) any individual working in the Executive Office of the President who is compensated at a rate of pay at or above level II of the Executive Schedule under section 5313 of title 5;
- (4) any Assistant Attorney General and any individual working in the Department of Justice who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5;
- (5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;
- (6) any individual who leaves any office or position described in any of paragraphs (1) through (5) of this subsection, during the incumbency of the President under whom such individual served in the office or position plus one year after such incumbency, but in no event longer than a period of three years after the individual leaves the office or position;
- (7) any individual who held an office or position described in any of paragraphs (1) through (5) of this subsection during the incumbency of one President and who continued to hold the office or position for not more than 90 days into the term of the next President, during the 1-year period after the individual leaves the office or position; and
- (8) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the

President, and any officer of that committee exercising authority at the national level, during the incumbency of the President.

(c) Preliminary investigation with respect to persons not listed in subsection (b).—The Attorney General may conduct a preliminary investigation in accordance with section 592 if—

(1) the Attorney General receives information sufficient to constitute grounds to investigate whether any person other than a person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction; and

(2) the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest.

(d) Examination of information to determine need for preliminary investigation.—

(1) **Factors to be considered.**—In determining under subsection (a) or (c) (or section 592(c)(2)) whether grounds to investigate exist, the Attorney General shall consider only—

(A) the specificity of the information received; and

(B) the credibility of the source of the information.

(2) **Time period for making determination.**—The Attorney General shall determine whether grounds to investigate exist not later than 15 days after the information is first received. If within that 15-day period the Attorney General determines that the information is not specific or is not from a credible source, then the Attorney General shall close the matter. If within that 15-day period the Attorney General determines that the information is specific and from a credible source, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General is unable to determine, within that 15-day period, whether the information is specific and from a credible source, the Attorney General shall, at the end of that 15-day period, commence a preliminary investigation with respect to that information.

(e) Recusal of Attorney General.—

(1) **When recusal is required.**—If information received under this chapter involves the Attorney General or a person with whom the Attorney General has a current or recent personal or financial relationship, the Attorney General shall recuse himself or herself by designating the next most senior officer in the

Department of Justice whom that information does not involve and who does not have a current or recent personal or financial relationship with such person to perform the duties assigned under this chapter to the Attorney General with respect to that information.

(2) Requirements for recusal determination.—The Attorney General shall, before personally making any other determination under this chapter with respect to information received under this chapter, determine under paragraph (1) whether to recuse himself or herself with respect to that information. A determination to recuse shall be in writing, shall identify the facts considered by the Attorney General, and shall set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division of the court under this chapter with respect to the information involved.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1867, and amended Pub.L. 97-409, §§ 3, 4(a), Jan. 3, 1983, 96 Stat. 2039, 2040; Pub.L. 98-473, Title II, § 228(b), Oct. 12, 1984, 98 Stat. 2030; Pub.L. 100-191, § 2, Dec. 15, 1987, 101 Stat. 1293.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Acts. Senate Report Nos. 95-170 and 95-273, and House Conference Report No. 95-1756, see 1978 U.S.Code Cong. and Adm.News, p. 4216.

1983 Acts. Senate Report No. 97-496, see 1982 U.S.Code Cong. and Adm.News, p. 3537.

1984 Acts. House Report No. 98-1030 and House Conference Report No. 98-1159, see 1984 U.S.Code Cong. and Adm.News, p. 3182.

1987 Acts. Senate Report No. 100-123, House Conference Report No. 100-452, and Statement by President, see 1987 U.S.Code Cong. and Adm.News, p. 2150.

Amendments

1987 Amendments. Subsec. (a). Pub.L. 100-191 added a subsection heading and, in text, substituted a reference to "a preliminary investigation in accordance with section 592" for a former reference to "an investigation pursuant to the provisions of this chapter" and substituted "may have violated any Federal criminal law other than a violation classified as" for "has committed a violation of any Federal criminal law other than a violation constituting".

Subsec. (b). Pub.L. 100-191 added a subsection heading and, in text, re-enacted pars. (1)–(5) substantially without change, in par. (6) substituted a three-year period after the individual leaves the office or position as the maximum covered period for a former covered period of two years after the individual left office, in par. (7) substituted a reference to a person holding an office during the incumbency of one President who continues to hold the office or position for not more than 90 days into the term of the next President, during the 1-year period after the individual leaves the office or position, for former reference to a person who continued to hold office for not more than 90 days into the term of the next President during the period such person served plus one year after such person left the office, and, in par. (8) deleted language giving the campaign manager or director as examples of a campaign officer exercising authority at the national level.

Subsec. (c). Pub.L. 100-191 added a subsection heading and, in text, substituted provisions authorizing the Attorney General to conduct a preliminary investigation in accordance with section 592 if (1) the Attorney General receives

information sufficient to constitute grounds to investigate whether any person other than a person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction; and (2) the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest, for former provisions which had directed that whenever the Attorney General received information sufficient to constitute grounds to investigate that any person not described in subsection (b) of this section had committed a violation of any Federal criminal law other than a violation constituting a petty offense, the Attorney General could conduct an investigation and apply for an independent counsel pursuant to the provisions of this chapter if the Attorney General determined that investigation of such person by the Attorney General or other officer of the Department of Justice might result in a personal, financial, or political conflict of interest.

Subsecs. (d), (e). Pub.L. 100-191 added subsecs. (d) and (e).

1984 Amendments. Subsec. (a). Pub.L. 98-473 substituted "Class B or C misdemeanor or an infraction" for "petty offense".

1983 Amendments. Subsec. (a). Pub.L. 97-409, § 4(a)(1), substituted "information sufficient to constitute grounds to investigate" for "specific information" after "the Attorney General receives".

Subsec. (b)(3). Pub.L. 97-409, § 3, substituted "who is compensated at or above a rate equivalent to level II" for "and compensated at a rate not less than the annual rate of basic pay provided for level IV".

Subsec. (b)(4), (5). Pub.L. 97-409, § 3, redesignated as par. (5) "the Director of Central Intelligence" and all that followed through end of par. (4). Former par. (5) redesignated (6).

Subsec. (b)(6). Pub.L. 97-409, § 3, redesignated former par. (5) as (6) and substituted "through (5) of this subsection during the period consisting of the

incumbency of the President such individual serves plus one year after such incumbency, but in no event longer than two years after the individual leaves office;" for "through (4) of this subsection during the incumbency of the President or during the period the last preceding President held office, if such preceding President was of the same political party as the incumbent President; and". Former par. (6) redesignated (8).

Subsec. (b)(7). Pub.L. 97-409, § 3, added par. (7).

Subsec. (b)(8). Pub.L. 97-409, § 3, redesignated former par. (6) as (8) and substituted "the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of the campaign exercising authority at the national level, such as the campaign manager or director, during the incumbency of the President" for "any officer of the principal national campaign committee seeking the election or reelection of the President".

Subsec. (c). Pub.L. 97-409, § 4(a)(2), added subsec. (c).

Effective Dates

1987 Acts. Section 6 of Pub.L. 100-191 provided that:

"(a) **In general.**— Subject to subsection (b), the amendments made by this Act [enacting section 599 of this title, amending sections 49 and 591 to 598 of this title, sections 203 and 205 of Pub.L. 95-521 set out in Appendix 4 to Title 5, Government Organization and Employees, and section 202 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as a note under section 1 of this title, and amending provisions set out as a note under this section] take effect on the date of the enactment of this Act [Dec. 15, 1987].

"(b) **Pending proceedings.**— With respect to any proceeding under chapter 39 of title 28, United States Code (before the redesignation of such chapter as chapter 40 by section 144(g) of Public Law 99-554) [this chapter], or under chapter 40 of such title (after such redesignation) [this chapter], which is pending on the date of the enactment of this Act [Dec. 15, 1987], the following shall apply:

"(1) Except as provided in paragraphs (2) and (3), the provisions of

chapter 40 of such title [this chapter] as in effect on the day before such date of enactment [Dec. 15, 1987] shall, in lieu of the amendments made by this Act, continue to apply on or after such date to such proceeding until such proceeding is terminated in accordance with such chapter.

"(2) The following provisions shall apply to such proceeding on or after such date of enactment:

"(A) Section 593(f) of title 28, United States Code, as amended by section 2 of this Act [section 593(f) of this title] relating to the award of attorneys' fees.

"(B) Section 594(d)(2) of such title, as added by section 2 of this Act [section 594(d)(2) of this title], to the extent that such section 594(d)(2) relates to reports by the Attorney General on expenditures by independent counsel, except that the first such report shall be made only with respect to expenditures on or after the date of the enactment of this Act [Dec. 15, 1987].

"(C) Section 594(h)(1)(A) of such title, as added by section 2 of this Act [section 594(h)(1)(A) of this title], relating to reports by independent counsel, except that the 6-month periods described in such section 594(h)(1)(A) shall be calculated from the date of the enactment of this Act [Dec. 15, 1987].

"(D) Section 594(i) of such title, as added by section 2 of this Act [section 594(i) of this title], relating to the independence of the office of independent counsel for certain purposes.

"(E) Section 594(k) of such title, as added by section 2 of this Act [section 594(u) of this title], relating to custody of records of independent counsel.

"(F) Section 596(a)(3) of such title, as amended by section 2 of this Act [section 596(a)(3) of this title], relating to judicial review of the removal of an independent counsel from office.

"(G) Section 596(c) of such title, as added by section 2 of this Act [section 596(c) of this title], relating to audits of expenditures of independent counsel.

"(H) The amendments made by section 3 of this Act [amending section 202(a) of Title 18, Crimes and Criminal Procedure, and sections 203 and 205 of Pub.L. 95-521, set out in Appendix 4 to Title 5, Government Organization and Employees], relating to the status of independent counsel and their appointees as special government employees and to their financial disclosure requirements.

"(3) Section 594(j) of title 28, United States Code, as added by section 2 of this Act [section 594(j) of this title], relating to certain standards of conduct shall, 90 days after the date of the enactment of this Act [Dec. 15, 1987], apply to a pending proceeding described in this subsection."

1984 Acts. Section 235(a)(1)(B)(ii)(IV) of Pub.L. 98-473 had provided that the amendment made by section 228 of Pub.L. 98-473 was to be effective Oct. 12, 1984. Pub.L. 99-646, § 35(2)(D), Nov. 10, 1986, 100 Stat. 3599, amended section 235(a)(1)(B)(ii)(IV) of Pub.L. 98-473 making it inapplicable to section 228. Amendment by Pub.L. 98-473 effective the first day of the first calendar month beginning 36 months after Oct. 12, 1984, see section 235(a)(1) of Pub.L. 98-473, as amended, set out as a note under section 3551 of Title 18, Crimes and Criminal Procedure.

1978 Acts. Section 604 of Pub.L. 95-521 provided that: "Except as provided in this section, the amendments made by this title [enacting this chapter and sections 49, 528, and 529 of this title] shall take effect on the date of the enactment of this Act [Oct. 26, 1978]. The provisions of chapter 39 of title 28 of the United States Code, as added by section 601 of this Act, shall not apply to specific information received by the Attorney General pursuant to section 591 of such title 28, if the Attorney General determines that—

"(1) such specific information is directly related to a prosecution pending at the time such specific information is received by the Attorney General;

"(2) such specific information is related to a matter which has been presented to a grand jury and is received by the Attorney General within one hundred and eighty days of the date of

the enactment of this Act [Oct. 26, 1978]; or

"(3) such specific information is related to an investigation that is pending at the time such specific information is received by the Attorney General, and such specific information is received by the Attorney General within ninety days of the date of the enactment of this Act [Oct. 26, 1978]."

Contingency Fund for Independent Counsels

Section 601(c) of Pub.L. 95-521, as amended Pub.L. 97-409, § 2(c)(2), Jan. 3, 1983, 96 Stat. 2039; Pub.L. 100-191, § 5(b), Dec. 15, 1987, 101 Stat. 1307, provided that: "There are authorized to be appropriated for each fiscal year such sums as may be necessary, to be held by the Department of Justice as a contingency fund for the use of any independent counsels appointed under chapter 40 (relating to independent counsel) of title 28

of the United States Code [this chapter] in the carrying out of functions under such chapter."

Permanent Appropriation for Expenses of Independent Counsels

Pub.L. 100-202, § 101(a) [Title II], Dec. 22, 1987, 101 Stat. 1329-9, provided in part "That a permanent indefinite appropriation is established within the Department of Justice to pay all necessary expenses of investigations and prosecutions by independent counsel appointed pursuant to the provisions of 28 U.S.C. 591 et seq. [this chapter] or other law: *Provided further*, That the Comptroller General shall perform semiannual financial reviews of expenditures from the Independent Counsel permanent indefinite appropriation, and report their findings to the Committees on Appropriations of the House and Senate".

LIBRARY REFERENCES

American Digest System

Attorney general; powers and duties in general, see Attorney General ¶6.

Encyclopedias

Attorney general; powers and duties in general, see C.J.S. Attorney General § 7.

WESTLAW ELECTRONIC RESEARCH

Attorney general cases: 46k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

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1. Constitutionality—Generally

Responsibility imposed on Congress by Article II empowers it to enact laws to guard against evils of massive conflicts of interest involved in enforcement of federal criminal law against highest officials of government and to vest in

courts the appointment of inferior officers to carry out this responsibility. In re Olson, 1987, 818 F.2d 34, 260 U.S.App. D.C. 168.

2. — Justiciability

Before federal court may exercise jurisdiction over plaintiff's substantive challenge to constitutionality of Ethics in Government Act, plaintiff must present justiciable case or controversy. North v. Walsh, D.D.C.1987, 656 F.Supp. 414.

3. — Ripeness

Action brought by former staff member of National Security Council, seeking declaratory and injunctive relief against implementation of certain provisions of Ethics in Government Act on the ground that independent counsel provisions of Act offended principles of separation of powers, and were thus constitutionally infirm, was not ripe for

Note 3

adjudication, where former staff member failed to allege sufficient hardship to warrant anticipatory judicial involvement in ongoing criminal investigation which had not resulted in indictment or criminal prosecution. *North v. Walsh*, D.D.C.1987, 656 F.Supp. 414.

4. Purpose

Fundamental purpose of this chapter is to ensure that serious allegations of unlawful conduct by federal executive officials are subject to review by counsel independent of any incumbent administration. *Dellums v. Smith*, D.C.Cal.1984, 577 F.Supp. 1449, reversed on other grounds 797 F.2d 817.

5. Persons or entities subject to investigation

The United States Department of Justice would not be a proper subject for investigation by an independent counsel. *In re INSLAW, Inc.*, 1989, 885 F.2d 880, 280 U.S.App.D.C. 258.

6. Liability for investigation

Two assistant United States attorneys who were acting within scope of their duties concerning investigation of plaintiffs were not liable for defamation when allegations against plaintiffs were publicized by mailing of letter to United States Attorney General informing him of allegations and requesting an investigation pursuant to Ethics in Government Act. *Schiavone v. Montuoro*, D.C.N.Y. 1984, 587 F.Supp. 66.

7. Judicial review

Ethics in Government Act precluded judicial review, at behest of members of the public, of Attorney General's decisions not to investigate allegations of wrongdoing during 1980 presidential campaign by several persons who were currently high-ranking officers of federal government and not to seek appointment of independent counsel with respect to officials covered by the Act. *Banzhaf v. Smith*, 1984, 737 F.2d 1167, 238 U.S.App.D.C. 20.

8. Persons entitled to maintain action

Private citizens lacked standing to challenge refusal by Attorney General to conduct preliminary investigation required under Ethics in Government Act to determine whether the President and other high-level federal executive officials had violated the Neutrality Act vis-a-vis Nicaragua. *Dellums v. Smith*, C.A.9 (Cal.) 1986, 797 F.2d 817.

9. Mandamus

District court judgment, which granted in part motion for summary judgment by plaintiffs seeking mandamus to compel Attorney General, pursuant to the Ethics in Government Act, to conduct preliminary investigation into charges against the Attorney General, assistant Attorney General and Director of the Federal Bureau of Investigation arising out of incident in which a number of persons were killed or wounded by members of the Ku Klux Klan and the American Nazi Party, would be reversed. *Nathan v. Smith*, 1984, 737 F.2d 1069, 237 U.S.App.D.C. 364.

§ 592. Preliminary investigation and application for appointment of an independent counsel

(a) Conduct of preliminary investigation.—

(1) In general.—A preliminary investigation conducted under this chapter shall be of such matters as the Attorney General considers appropriate in order to make a determination, under subsection (b) or (c), on whether further investigation is warranted, with respect to each potential violation, or allegation of a violation, of criminal law. The Attorney General shall make such determination not later than 90 days after the preliminary investigation is commenced, except that, in the case of a preliminary investigation commenced after a congressional request under subsection (g), the Attorney General shall make such determination not later than 90 days after the request is re-

ceived. The Attorney General shall promptly notify the division of the court specified in section 593(a) of the commencement of such preliminary investigation and the date of such commencement.

(2) Limited authority of Attorney General.—(A) In conducting preliminary investigations under this chapter, the Attorney General shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpoenas.

(B)(i) The Attorney General shall not base a determination under this chapter that information with respect to a violation of criminal law by a person is not specific and from a credible source upon a determination that such person lacked the state of mind required for the violation of criminal law.

(ii) The Attorney General shall not base a determination under this chapter that there are no reasonable grounds to believe that further investigation is warranted, upon a determination that such person lacked the state of mind required for the violation of criminal law involved, unless there is clear and convincing evidence that the person lacked such state of mind.

(3) Extension of time for preliminary investigation.—The Attorney General may apply to the division of the court for a single extension, for a period of not more than 60 days, of the 90-day period referred to in paragraph (1). The division of the court may, upon a showing of good cause, grant such extension.

(b) Determination that further investigation not warranted.—

(1) Notification of division of the court.—If the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are no reasonable grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court, and the division of the court shall have no power to appoint an independent counsel with respect to the matters involved.

(2) Form of notification.—Such notification shall contain a summary of the information received and a summary of the results of the preliminary investigation.

(c) Determination that further investigation is warranted.—

(1) Application for appointment of independent counsel.—The Attorney General shall apply to the division of the court for the appointment of an independent counsel if—

(A) the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are reasonable grounds to believe that further investigation is warranted; or

(B) the 90-day period referred to in subsection (a)(1), and any extension granted under subsection (a)(3), have elapsed and the Attorney General has not filed a notification with the division of the court under subsection (b)(1).

In determining under this chapter whether reasonable grounds exist to warrant further investigation, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the conduct of criminal investigations.

(2) Receipt of additional information.—If, after submitting a notification under subsection (b)(1), the Attorney General receives additional information sufficient to constitute grounds to investigate the matters to which such notification related, the Attorney General shall—

(A) conduct such additional preliminary investigation as the Attorney General considers appropriate for a period of not more than 90 days after the date on which such additional information is received; and

(B) otherwise comply with the provisions of this section with respect to such additional preliminary investigation to the same extent as any other preliminary investigation under this section.

(d) Contents of application.—Any application for the appointment of an independent counsel under this chapter shall contain sufficient information to assist the division of the court in selecting an independent counsel and in defining that independent counsel's prosecutorial jurisdiction so that the independent counsel has adequate authority to fully investigate and prosecute the subject matter and all matters related to that subject matter.

(e) Disclosure of information.—Except as otherwise provided in this chapter, no officer or employee of the Department of Justice or an office of independent counsel may, without leave of the division of the court, disclose to any individual outside the Department of Justice or such office any notification, application, or any other document, materials, or memorandum supplied to the division of the court under this chapter. Nothing in this chapter shall be construed as authorizing the withholding of information from the Congress.

(f) Limitation on judicial review.—The Attorney General's determination under this chapter to apply to the division of the court for the appointment of an independent counsel shall not be reviewable in any court.

(g) Congressional request.—

(1) By Judiciary Committee or members thereof.—The Committee on the Judiciary of either House of the Congress, or a majority of majority party members or a majority of all nonmajority party members of either such committee, may request in writing that the Attorney General apply for the appointment of an independent counsel.

(2) Report by Attorney General pursuant to request.—Not later than 30 days after the receipt of a request under paragraph (1), the Attorney General shall submit, to the committee making the request, or to the committee on which the persons making the request serve, a report on whether the Attorney General has begun or will begin a preliminary investigation under this chapter of the matters with respect to which the request is made, in accordance with subsection (a) or (c) of section 591, as the case may be. The report shall set forth the reasons for the Attorney General's decision regarding such preliminary investigation as it relates to each of the matters with respect to which the congressional request is made. If there is such a preliminary investigation, the report shall include the date on which the preliminary investigation began or will begin.

(3) Submission of information in response to congressional request.—At the same time as any notification, application, or any other document, material, or memorandum is supplied to the division of the court pursuant to this section with respect to a preliminary investigation of any matter with respect to which a request is made under paragraph (1), such notification, application, or other document, material, or memorandum shall be supplied to the committee making the request, or to the committee on which the persons making the request serve. If no application for the appointment of an independent counsel is made to the division of the court under this section pursuant to such a preliminary investigation, the Attorney General shall submit a report to that committee stating the reasons why such application was not made, addressing each matter with respect to which the congressional request was made.

(4) Disclosure of information.—Any report, notification, application, or other document, material, or memorandum supplied to a committee under this subsection shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such report, notification, application, document, material, or memorandum as will

not in the committee's judgment prejudice the rights of any individual.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1868, and amended Pub.L. 97-409, §§ 2(a)(1), 4(b)-(e), Jan. 3, 1983, 96 Stat. 2039-2041; Pub.L. 100-191, § 2, Dec. 15, 1987, 101 Stat. 1295.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Acts. Senate Report Nos. 95-170 and 95-273, and House Conference Report No. 95-1756, see 1978 U.S.Code Cong. and Adm.News, p. 4216.

1983 Acts. Senate Report No. 97-496, see 1982 U.S.Code Cong. and Adm.News, p. 3537.

1987 Acts. Senate Report No. 100-123, House Conference Report No. 100-452, and Statement by President, see 1987 U.S.Code Cong. and Adm.News, p. 2150.

Amendments

1987 Amendments. Catchline. Pub.L. 100-191 substituted "Preliminary investigation and application for appointment of an independent counsel" for "Application for appointment of a independent counsel".

Subsec. (a). Pub.L. 100-191 added subsec. (a) heading.

Subsec. (a)(1). Pub.L. 100-191 added par. (1) heading and, in text, substituted provisions directing that a preliminary investigation conducted under this chapter shall be of such matters as the Attorney General considers appropriate in order to make a determination, under subsection (b) or (c), on whether further investigation is warranted, with respect to each potential violation, or allegation of a violation, of criminal law, that the Attorney General shall make such determination not later than 90 days after the preliminary investigation is commenced, except in the case of a preliminary investigation commenced after a congressional request under subsection (g), the Attorney General shall make such determination not later than 90 days after the request is received, and that the Attorney General shall promptly notify the division of the court specified in section 593(a) of the commencement of such preliminary investigation and the date of such commencement, for provisions which had directed that, upon receiving information that the Attorney General determined was sufficient to constitute

grounds to investigate that any person covered by the Act had engaged in conduct described in subsection (a) or (c) of section 591 of this title (such determination based upon stated factors), the Attorney General had to conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deemed appropriate.

Subsec. (a)(2). Pub.L. 100-191 added par. (2) heading.

Subsec. (a)(2)(A). Pub.L. 100-191 designated the existing provisions of subsec. (a)(2) as subpar. (A) and, in subpar. (A) as so designated, substituted "preliminary investigations under this chapter" for "preliminary investigations pursuant to this section" and "subpoenas" for "subpenas".

Subsec. (a)(2)(B). Pub.L. 100-191 added subpar. (B).

Subsec. (a)(3). Pub.L. 100-191 added par. (3).

Subsec. (b). Pub.L. 100-191 added headings for subsec. (b) and pars. (1) and (2), re-enacted the text of subsec. (b)(1) and (2) substantially without change, and struck out former par. (3), prohibiting the revelation of memoranda to outside individuals without leave of the division of the court.

Subsec. (c). Pub.L. 100-191 added headings for subsec. (c) and for each of pars. (1) and (2) and re-enacted the text of subsec. (c)(1) and (2) substantially without change.

Subsec. (d). Pub.L. 100-191 added subsec. (d) heading, struck out the par. "(1)" designation preceding "Any application", re-enacted the text of former par. (1) substantially without change, and struck out former par. (2) relating to the prohibition upon the revelation of information to outside individuals without leave of the division of the court.

Subsec. (e). Pub.L. 100-191 added subsec. (e) heading and, in text, substi-

tuted provisions prohibiting the revelation of documents, materials, and memoranda to outside individuals without leave of the court (with exception relating to congress), for provisions relating to the referral to independent counsel by the Attorney General of matters within the independent counsel's prosecutorial jurisdiction.

Subsec. (f). Pub.L. 100-191 added subsec. (f) heading and re-enacted the text substantially without change.

Subsec. (g). Pub.L. 100-191 added subsec. (g).

1983 Amendments. Subsec. (a). Pub.L. 97-409, § 4(b), substituted direction, designated par. (1), that upon receiving information that the Attorney General determines is sufficient to constitute grounds to investigate that any person covered by the Act has engaged in conduct described in subsection (a) or (c) of section 591 of this title, the Attorney General shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate, and that in determining whether grounds to investigate exist, the Attorney General shall consider the degree of specificity of the information received and the credibility of the source of the information for provision that the Attorney General, upon receiving specific information that any of the persons described in section 591(b) of this title had engaged in conduct described in section 591(a) of this title, was to conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deemed appropriate, and added par. (2).

Subsec. (b)(1). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Pub.L. 97-409, § 4(c), substituted "that there are no reasonable grounds to believe that further investigation or prosecution is warranted" for "that the matter is so unsubstantiated that no further investigation or prosecution is warranted".

Subsec. (c)(1). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Pub.L. 97-409, § 4(d), substituted "finds reasonable grounds to believe that further investigation or prosecution is warranted" for "finds the matter war-

rants further investigation or prosecution" after "preliminary investigation," and "that there are no reasonable grounds to believe that further investigation or prosecution is warranted" for "that the matter is so unsubstantiated as not to warrant further investigation or prosecution", and added provision that in determining whether reasonable grounds exist to warrant further investigation, the Attorney General shall comply with written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

Subsec. (c)(2). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" in the provisions following subpar. (B).

Subsec. (c)(2)(A). Pub.L. 97-409, § 4(e)(1), substituted "information sufficient to constitute grounds to investigate" for "specific information" after "receives additional".

Subsec. (c)(2)(B). Pub.L. 97-409, § 4(e)(2), substituted "reasonable grounds exist to warrant" for "such information warrants" after "appropriate, that".

Subsecs. (d)(1), (e). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Pub.L. 97-409, § 2(a)(1)(B), substituted "independent counsel's" for "special prosecutor's" wherever appearing.

Subsec. (f). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Effective Dates

1987 Acts. Amendment by Pub.L. 100-191 to take effect on Dec. 15, 1987, and to apply only to new independent counsel proceedings and to new independent counsels coming into existence on and after Dec. 15, 1987, see section 6 of Pub.L. 100-191, set out as a note under section 591 of this title.

1978 Acts. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 604 of Pub.L. 95-521, set out as a note under section 591 of this title.

LIBRARY REFERENCES

American Digest System

Attorney general; powers and duties in general, see Attorney General ¶6.
 District and prosecuting attorneys; deputies, assistants, and substitutes, see
 District and Prosecuting Attorneys ¶3(1).

Encyclopedias

Attorney general; powers and duties in general, see C.J.S. Attorney General § 7.
 District and prosecuting attorneys; deputies, assistants, and substitutes, see
 C.J.S. District and Prosecuting Attorneys § 27 et seq.

WESTLAW ELECTRONIC RESEARCH

Attorney general cases: 46k[add key number].
 District and prosecuting attorneys cases: 131k[add key number].
 See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

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1. Constitutionality

Miscellaneous functions granted to Special Division pursuant to Ethics in Government Act did not violate Article III prohibition against judicial exercise of executive powers in that such functions were either passive or essentially ministerial, and were analogous to functions that federal judges performed in other contexts. *Morrison v. Olson*, Dist. Col. 1988, 108 S.Ct. 2597, 487 U.S. 654, 101 L.Ed.2d 569, on remand 857 F.2d 801, 273 U.S.App.D.C. 10.

Former deputy chief of staff and United States presidential assistant's civil action to challenge constitutionality of independent counsel provisions of Ethics in Government Act, and seeking declaratory and injunctive relief from independent counsel's continued exercise of prosecutorial authority, was impermissible preemptive civil challenge to criminal proceedings before final judgment; Federal Rules of Criminal Procedure provided adequate, although limited, opportunity to challenge shortcomings in prosecutorial authority after conviction.

Deaver v. Seymour, 1987, 822 F.2d 66, 261 U.S.App.D.C. 334.

2. Government employee status

Judge's role as independent counsel charged with investigating conduct of government agencies in their handling of a particular matter was not a "position with the government" and, thus, did not violate rule for operation of independent review board, which was created by consent decree to rid union of organized crime influences, prohibiting member of board from holding any position with the government. *U.S. v. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO*, S.D.N.Y. 1992, 808 F.Supp. 271.

3. Necessity of investigation

That investigative jurisdiction over additional targeted individual subject was being requested and obtained by referral to independent counsel did not eliminate necessity for compliance with requirement of Independent Counsel Reauthorization Act that there be preliminary investigation and finding of reasonable grounds to believe that further investigation, or prosecution of targeted official, as subject of investigation, was warranted. *In re Meese*, 1990, 907 F.2d 1192, 285 U.S.App.D.C. 186.

4. Time for completion of investigation

Ninety-day period within which Justice Department had to complete its preliminary investigation of alleged wrongdoing within Department did not begin to run, for purpose of deciding whether Department's preliminary report was

timely filed or whether all of allegations in House Committee report should have been automatically referred to Independent Counsel for investigation, until Department had been given "reasonable time" within which to evaluate House Committee's 3,000 page report on wrongdoing. In re Olson, 1987, 818 F.2d 34, 260 U.S.App.D.C. 168.

The ninety-day period referred to in subsec. (c)(1) of this section for the Attorney-General's preliminary investigation should be computed from the day when the specific information is effectively received by the Department of Justice. 1981 (Counsel-Inf. Op.) 5 Op.O.L.C. 397.

5. Scope of investigation

Charges in indictment arising from Iran-Contra affair did not fall outside the area authorized by the Attorney General in his request of the Special Division with respect to appointment of independent counsel and, in any event, the Ethics in Government Act did not require the Special Division to adopt verbatim the recommendations of the Attorney General in defining independent counsel's jurisdiction. U.S. v. North, D.D.C. 1988, 708 F.Supp. 387.

6. Liability for investigation

Two assistant United States attorneys who were acting within scope of their duties concerning investigation of plaintiffs were not liable for defamation when allegations against plaintiffs were publicized by mailing of letter to United States Attorney General informing him of allegations and requesting an investigation pursuant to this chapter. Schiavone v. Montuoro, D.C.N.Y.1984, 587 F.Supp. 66.

7. Persons entitled to maintain action

Private citizen has no standing to seek appointment of independent counsel, absent request by Attorney General. In re Visser, 1992, 968 F.2d 1319, 297 U.S.App. D.C. 37.

Ethics in Government Act did not confer standing on private citizens to sue special division to compel it to appoint independent counsel in order to investigate alleged evidence of misconduct by federal judges; court did not have jurisdiction to appoint independent counsel, and application by private citizen was not authorized by Act. In re Kaminski,

1992, 960 F.2d 1062, 295 U.S.App.D.C. 135.

Government contractor, as private party, lacked standing under Independent Counsel Act to compel United States Attorney General to conduct preliminary investigation or to appoint independent counsel to conduct investigation into alleged misconduct in contract dispute with Department of Justice. In re INSLAW, Inc., 1989, 885 F.2d 880, 280 U.S.App.D.C. 258.

Private citizens lacked standing to challenge refusal by Attorney General to conduct preliminary investigation required under Ethics in Government Act to determine whether the President and other high-level federal executive officials had violated the Neutrality Act vis-a-vis Nicaragua. Dellums v. Smith, C.A.9 (Cal.) 1986, 797 F.2d 817.

The Ethics in Government Act did not create a private right of action to compel the Attorney General to investigate specific allegations of wrongdoing by federal officials. Beauchamp v. Meese, N.D.Ill.1987, 657 F.Supp. 1263.

8. Judicial review by district court

This chapter precluded judicial review, at behest of members of the public, of Attorney General's decisions not to investigate allegations of wrongdoing during 1980 presidential campaign by several persons who were currently high-ranking officers of federal government and not to seek appointment of independent counsel with respect to officials covered by this chapter. Banzhaf v. Smith, 1984, 737 F.2d 1167, 238 U.S.App. D.C. 20.

9. Jurisdiction of court of appeals

Court of Appeals did not have jurisdiction to appoint independent counsel to investigate and prosecute clerks or other judges, absent application from Attorney General requesting such appointment. In re Visser, 1992, 968 F.2d 1319, 297 U.S.App.D.C. 37.

10. Mandamus

District court judgment, which granted in part motion for summary judgment by plaintiffs seeking mandamus to compel Attorney General, pursuant to this chapter, to conduct preliminary investigation into charges against the Attorney General, assistant Attorney General and Director of the Federal Bureau of Inves-

tigation arising out of incident in which a number of persons were killed or wounded by members of the Ku Klux Klan and the American Nazi Party,

would be reversed. Nathan v. Smith, 1984, 737 F.2d 1069, 237 U.S.App.D.C. 364.

§ 593. Duties of the division of the court

(a) **Reference to division of the court.**—The division of the court to which this chapter refers is the division established under section 49 of this title.

(b) **Appointment and jurisdiction of independent counsel.**—

(1) **Authority.**—Upon receipt of an application under section 592(c), the division of the court shall appoint an appropriate independent counsel and shall define that independent counsel's prosecutorial jurisdiction.

(2) **Qualifications of independent counsel.**—The division of the court shall appoint as independent counsel an individual who has appropriate experience and who will conduct the investigation and any prosecution in a prompt, responsible, and cost-effective manner. The division of the court shall seek to appoint as independent counsel an individual who will serve to the extent necessary to complete the investigation and any prosecution without undue delay. The division of the court may not appoint as an independent counsel any person who holds any office of profit or trust under the United States.

(3) **Scope of prosecutorial jurisdiction.**—In defining the independent counsel's prosecutorial jurisdiction, the division of the court shall assure that the independent counsel has adequate authority to fully investigate and prosecute the subject matter with respect to which the Attorney General has requested the appointment of the independent counsel, and all matters related to that subject matter. Such jurisdiction shall also include the authority to investigate and prosecute Federal crimes, other than those classified as Class B or C misdemeanors or infractions, that may arise out of the investigation or prosecution of the matter with respect to which the Attorney General's request was made, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.

(4) **Disclosure of identity and prosecutorial jurisdiction.**—An independent counsel's identity and prosecutorial jurisdiction (including any expansion under subsection (c)) may not be made public except upon the request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such independent counsel would be in the best interests of justice. In

any event, the identity and prosecutorial jurisdiction of such independent counsel shall be made public when any indictment is returned, or any criminal information is filed, pursuant to the independent counsel's investigation.

(c) Expansion of jurisdiction.—

(1) In general.—The division of the court, upon the request of the Attorney General, may expand the prosecutorial jurisdiction of an independent counsel, and such expansion may be in lieu of the appointment of another independent counsel.

(2) Procedure for request by independent counsel.—**(A)** If the independent counsel discovers or receives information about possible violations of criminal law by persons as provided in section 591, which are not covered by the prosecutorial jurisdiction of the independent counsel, the independent counsel may submit such information to the Attorney General. The Attorney General shall then conduct a preliminary investigation of the information in accordance with the provisions of section 592, except that such preliminary investigation shall not exceed 30 days from the date such information is received. In making the determinations required by section 592, the Attorney General shall give great weight to any recommendations of the independent counsel.

(B) If the Attorney General determines, after according great weight to the recommendations of the independent counsel, that there are no reasonable grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court and the division of the court shall have no power to expand the jurisdiction of the independent counsel or to appoint another independent counsel with respect to the matters involved.

(C) If—

(i) the Attorney General determines that there are reasonable grounds to believe that further investigation is warranted; or

(ii) the 30-day period referred to in subparagraph (A) elapses without a notification to the division of the court that no further investigation is warranted,

the division of the court shall expand the jurisdiction of the appropriate independent counsel to include the matters involved or shall appoint another independent counsel to investigate such matters.

(d) Return for further explanation.—Upon receipt of a notification under section 592 or subsection (c)(2)(B) of this section from

the Attorney General that there are no reasonable grounds to believe that further investigation is warranted with respect to information received under this chapter, the division of the court shall have no authority to overrule this determination but may return the matter to the Attorney General for further explanation of the reasons for such determination.

(e) Vacancies.—If a vacancy in office arises by reason of the resignation, death, or removal of an independent counsel, the division of the court shall appoint an independent counsel to complete the work of the independent counsel whose resignation, death, or removal caused the vacancy, except that in the case of a vacancy arising by reason of the removal of an independent counsel, the division of the court may appoint an acting independent counsel to serve until any judicial review of such removal is completed.

(f) Attorneys' fees.—

(1) Award of fees.—Upon the request of an individual who is the subject of an investigation conducted by an independent counsel pursuant to this chapter, the division of the court may, if no indictment is brought against such individual pursuant to that investigation, award reimbursement for those reasonable attorneys' fees incurred by that individual during that investigation which would not have been incurred but for the requirements of this chapter. The division of the court shall notify the Attorney General of any request for attorneys' fees under this subsection.

(2) Evaluation of fees.—The division of the court may direct the Attorney General to file a written evaluation of any request for attorneys' fees under this subsection, analyzing for each expense—

- (A)** the sufficiency of the documentation;
- (B)** the need or justification for the underlying item; and
- (C)** the reasonableness of the amount of money requested.

(g) Disclosure of information.—The division of the court may, subject to section 594(h)(2), allow the disclosure of any notification, application, or any other document, material, or memorandum supplied to the division of the court under this chapter.

(h) Amicus curiae briefs.—When presented with significant legal issues, the division of the court may disclose sufficient information about the issues to permit the filing of timely amicus curiae briefs. (Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1869, and amended Pub.L. 97-409, §§ 2(a)(1), 5, Jan. 3, 1983, 96 Stat. 2039, 2041; Pub.L. 100-191, § 2, Dec. 15, 1987, 101 Stat. 1297.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Acts. Senate Report Nos. 95-170 and 95-273, and House Conference Report No. 95-1756, see 1978 U.S.Code Cong. and Adm.News, p. 4216.

1983 Acts. Senate Report No. 97-496, see 1982 U.S.Code Cong. and Adm.News, p. 3537.

1987 Acts. Senate Report No. 100-123, House Conference Report No. 100-452, and Statement by President see 1987 U.S.Code Cong. and Adm.News, p. 2150.

Amendments

1987 Amendments. Catchline. Pub.L. 100-191 re-enacted the section heading without change.

Subsec. (a). Pub.L. 100-191 added subsec. (a) heading and re-enacted the text without change.

Subsec. (b). Pub.L. 100-191 added subsec. (b) heading, designated existing provisions as pars. (1) and (4) and in pars. (1) and (4), as so designated, added par. headings and re-enacted such provisions substantially without change, and added pars. (2) and (3).

Subsec. (c). Pub.L. 100-191 added subsec. (c) heading.

Subsec. (c)(1). Pub.L. 100-191 designated existing provisions as par. (1), added a par. (1) heading, and re-enacted such provisions substantially without change.

Subsec. (c)(2). Pub.L. 100-191 added par. (2).

Subsec. (d). Pub.L. 100-191 added subsec. (d) heading, and substituted provisions authorizing the court to return the matter to the Attorney General for further explanation when the Attorney General notifies the court that there are no reasonable grounds to believe that further investigation is warranted with respect to information received under this chapter for former provisions which had directed that the court could not appoint as an independent counsel any person who recently held any office of profit or trust under the United States.

Subsec. (e). Pub.L. 100-191 added subsec. (e) heading and re-enacted existing text substantially without change.

Subsec. (f)(1). Pub.L. 100-191 added subsec. and par. headings, and substituted provisions relating to attorneys' fees for provisions authorizing the granting of an extension of 60 days in the preliminary investigation.

Subsec. (f)(2). Pub.L. 100-191 added par. (2).

Subsec. (g). Pub.L. 100-191 added subsec. heading, and substituted provisions relating to the disclosure of information for provisions relating to attorneys' fees.

Subsec. (h). Pub.L. 100-191 added subsec. (h).

1983 Amendments. Subsec. (b). Pub.L. 97-409, § 2(a)(1), substituted "independent counsel" for "special prosecutor" and "independent counsel's" for "special prosecutor's" wherever appearing.

Subsecs. (c) to (e). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Subsecs. (f), (g). Pub.L. 97-409, § 5, added subsecs. (f) and (g).

Effective Dates

1987 Acts. Amendment by Pub.L. 100-191 to take effect on Dec. 15, 1987, and to apply only to new independent counsel proceedings and to new independent counsels coming into existence on and after Dec. 15, 1987, but with subsec. (f) applicable to previously initiated proceedings still pending on Dec. 15, 1987, see section 6 of Pub.L. 100-191, set out as a note under section 591 of this title.

1978 Acts. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 604 of Pub.L. 95-521, set out as a note under section 591 of this title.

CROSS REFERENCES

Application for order from special prosecutor appointed under this section for disclosure of return and information other than taxpayer return information for use in criminal investigations, see 26 USCA § 6103.

LIBRARY REFERENCES

American Digest System

District and prosecuting attorneys; deputies, assistants, and substitutes, see District and Prosecuting Attorneys ¶3(1).

Federal courts; jurisdiction and powers generally, see Federal Courts ¶1 et seq.

Encyclopedias

District and prosecuting attorneys; deputies, assistants, and substitutes, see C.J.S. District and Prosecuting Attorneys § 27 et seq.

Federal courts; jurisdiction and powers generally, see C.J.S. Federal Courts § 4(1) et seq.

WESTLAW ELECTRONIC RESEARCH

District and prosecuting attorneys cases: 131k[add key number].

Federal courts cases: 170bk[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

I. GENERALLY 1-20

II. ATTORNEY FEES 21-END

For Detailed Alphabetical Note Index, see the Various Subdivisions.

I. GENERALLY

*Subdivision Index***Constitutionality 1****Jurisdiction of independent counsel 3****Power of Special Division 2****Submission of information 4****1. Constitutionality**

Congress acted within its authority under appointments clause in creating Special Division with authority to appoint independent counsel to investigate misconduct in Executive Branch, provided that such counsel's jurisdiction be related to factual circumstances giving rise to Attorney General's request for appointment. *Morrison v. Olson*, Dist.Col.1988, 108 S.Ct. 2597, 487 U.S. 654, 101 L.Ed.2d 569, on remand 857 F.2d 801, 273 U.S.App.D.C. 10.

2. Power of Special Division

Special Division has no authority to take any action or undertake any duties that are not specifically authorized by Ethics in Government Act. *Morrison v. Olson*, Dist.Col.1988, 108 S.Ct. 2597, 487

U.S. 654, 101 L.Ed.2d 569, on remand 857 F.2d 801, 273 U.S.App.D.C. 10.

3. Jurisdiction of independent counsel

Independent counsel possessed jurisdiction to prosecute defendant for perjury and obstruction arising out of his testimony before Congress; wording of special division's order outlining jurisdiction of independent counsel, and statutory authority underlying it, supported counsel's jurisdiction over matters "arising out of" and "related to" Iran-Contra initiative, and defendant's testimony bore "demonstrable relationship" with initiative. *U.S. v. Secord*, D.D.C.1989, 725 F.Supp. 563.

4. Submission of information

Forwarding of material by subordinate in Office of Independent Counsel to subordinate in Public Integrity Section of Department of Justice did not constitute formal submission to Attorney General such that Attorney General had duty to act under Independent Counsel Act to investigate alleged misconduct in contract dispute involving Department of Justice; material was forwarded "for such action, if any," that PIS might wish

to take. In re INSLAW, Inc., 1989, 885 F.2d 880, 280 U.S.App.D.C. 258.

II. ATTORNEY FEES

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21. Construction

Waivers of sovereign immunity, granting right to petition Government for attorneys' fees, are to be strictly construed in favor of sovereign. In re Nofziger, 1991, 925 F.2d 428, 288 U.S.App.D.C. 197, rehearing denied 938 F.2d 1397, 291 U.S.App.D.C. 138.

As the attorney fee provision of the Independent Counsel Reauthorization Act is a waiver of sovereign immunity, it must be strictly construed. In re Olson, 1990, 892 F.2d 1073, 282 U.S.App.D.C. 139.

22. Retroactive effect

Subsec. (g) of this section providing for award of attorney fees to a person who is subject to investigation and who is not indicted is not to be applied retroactively to a case which was closed prior to its adoption. In re Jordan, 1984, 745 F.2d 1574, 240 U.S.App.D.C. 437.

23. Indictment

Former high government official was not precluded from seeking statutory reimbursement of attorneys fees expended in connection with independent counsel's investigation of alleged illegal post-employment lobbying activities, even though he was ultimately indicted; indictment was found defective and intent of statute would be subverted by not extending it to cover official's situation. In re Nofziger, 1991, 925 F.2d 428, 288 U.S.App.D.C. 197, rehearing denied 938 F.2d 1397, 291 U.S.App.D.C. 138.

24. Acquittal

Fact that applicant was acquitted had no bearing on his right to be awarded attorney fees under the Ethics Act, as the statute limits attorney fees to subjects who have not been validly indicted. In re Nofziger, 1992, 956 F.2d 287, 294 U.S.App.D.C. 1.

25. But for requirement—Generally

Within section of the Ethics in Government Act allowing reimbursement of attorney fees to government official who is subject of investigation conducted by independent counsel if no indictment is brought and fees would not have been incurred but for the requirements of the Act, attorney services challenging the constitutionality of the Act would not satisfy the "but for" requirement; it is the character of the investigation and prosecution of the subject upon which compliance with "but for" requirement depends, and defense tactics employed by defense counsel cannot satisfy the requirement. In re Nofziger, 1991, 938 F.2d 1397, 291 U.S.App.D.C. 138.

Reasonable attorneys' fees incurred during initial investigation by independent counsel which ended with independent counsel's announcement that Assistant Attorney General's testimony before Congress probably did not constitute a prosecutable violation of federal criminal law, satisfied the "but for" requirement for recovery of attorney fees and were compensable under Independent Counsel Reauthorization Act. In re Olson, 1989, 884 F.2d 1415, 280 U.S.App.D.C. 205.

26. — Duplicative investigations

Fact that investigation by Public Integrity Section of Department of Justice was conducted and that it did not recommend prosecution of Department official

established that, in the investigation conducted by Independent Counsel, the official was being subjected to expenses for a duplicative investigation that he would not have been subject to in the absence of the Ethics in Government Act and thus satisfied the "but for" requirement for an unindicted investigation subject to recover attorney fees under the Independent Counsel Reauthorization Act. In re Olson, 1990, 892 F.2d 1073, 282 U.S.App.D.C. 139.

27. — Similarity with costs of conventional investigation

Former high government employee who was prosecuted for communicating with agency with which he was formerly employed within one year after leaving government service failed to show that attorney fees were incurred by him during independent counsel investigation that would not have been incurred but for requirements of the Ethics in Government Act, so as to qualify him for attorney fees when, following reversal of convictions, independent counsel declined further prosecution and indictments were dismissed with prejudice; record demonstrated that, in absence of the Act, official would nonetheless have been investigated and prosecuted by Department of Justice under statute which includes private citizens. In re Nofziger, 1991, 938 F.2d 1397, 291 U.S.App.D.C. 138.

Attorneys fees incurred in connection with independent counsel investigation of government official's allegedly illegal lobbying activities were not reimbursable under statute allowing recovery of fees which would not have been incurred "but for" investigation; there was nothing in the investigation, indictments, time or effort expended by government, types of inquiries conducted, or results which were materially different from those which would have resulted from a conventional Department of Justice investigation. In re Nofziger, 1991, 925 F.2d 428, 288 U.S.App.D.C. 197, rehearing denied 938 F.2d 1397, 291 U.S.App.D.C. 138.

28. — Vigorousness of investigation

United States Attorney General was entitled to recover attorney fees and costs incurred in connection with investigation by independent counsel as to whether Attorney General, as counselor

to President, violated conflict of interest laws in assisting minority-owned corporation in its efforts to obtain government defense contracts; no indictment was brought against Attorney General upon completion of investigation and basis upon which referral was made and extreme expansion of resulting investigation subjected Attorney General to more vigorous application of criminal law than was applied to other citizens and caused him to incur legal expenses no ordinary citizen would have incurred but for independent counsel statute. In re Meese, 1990, 907 F.2d 1192, 285 U.S.App.D.C. 186.

29. Compensable services—Generally

Government official who has been subject of investigation conducted by independent counsel cannot recover reimbursement for attorney fees that are inherent in every independent counsel investigation, such as fees for services rendered in reviewing the Ethics in Government Act and discussing strategy vis-a-vis the independent counsel. In re Nofziger, 1991, 938 F.2d 1397, 291 U.S.App.D.C. 138.

30. — Accountants fees

Fees for work performed by "accountant/attorneys" were reimbursable under Independent Counsel Reauthorization Act as "reasonable attorneys' fees" in tax case. In re Sealed Case, 1989, 890 F.2d 451, 281 U.S.App.D.C. 334.

31. — Preliminary investigation

Attorney services provided, immediately prior to and in anticipation of appointment of independent counsel, to government official who becomes subject of independent counsel investigation are not compensable under the Ethics in Government Act. In re Nofziger, 1991, 938 F.2d 1397, 291 U.S.App.D.C. 138.

Independent Counsel Reauthorization Act did not authorize award of attorney fees incurred during preliminary investigation conducted by Attorney General. In re Sealed Case, 1989, 890 F.2d 451, 281 U.S.App.D.C. 334.

32. — Preparation of attorney fees application

United States Attorney General, in recovering attorney fees under Independent Counsel Reauthorization Act, was not entitled to recover fees for services rendered in preparation of attorney fee

applications; those fees were not for services rendered in asserting merits of Attorney General's defense to independent counsel investigation. In re Meese, 1990, 907 F.2d 1192, 285 U.S.App.D.C. 186.

33. — Review of press clippings

Fees incurred by United States Attorney General's attorneys in reviewing press clippings concerning independent counsel investigation, because of heavy media involvement, provided useful and important information that assisted counsel in representation of subject and was therefore reasonably related to defense of investigation and were recoverable under Independent Counsel Reauthorization Act. In re Meese, 1990, 907 F.2d 1192, 285 U.S.App.D.C. 186.

34. Expenses

Expenses for business meals, support staff overtime, service fee, supplies, and photocopying were excessive or unnecessary and could not be fully recovered by United States Attorney General under Independent Counsel Reauthorization Act.

In re Meese, 1990, 907 F.2d 1192, 285 U.S.App.D.C. 186.

35. Payment of fees

Subject of independent counsel investigation need not have paid attorney fees before reimbursement can be sought under Independent Counsel Reauthorization Act; rather, subject need only be legally liable for fees incurred by representation during investigation. In re Donovan, 1989, 877 F.2d 982, 278 U.S.App.D.C. 194.

36. Time of request

Request for attorney fees made by individuals who testified under grant of transactional immunity in investigation conducted by independent counsel was premature; while individuals had not been indicted, indictment was still possible, it was not clear that fees would have been incurred in absence of independent counsel law, or whether applicants were subjects of grand jury investigation and it was inopportune time to interrupt ongoing investigation to embark on extensive collateral fee inquiry. In re North, 1988, 842 F.2d 340, 268 U.S.App.D.C. 344.

§ 594. Authority and duties of an independent counsel

(a) **Authorities.**—Notwithstanding any other provision of law, an independent counsel appointed under this chapter shall have, with respect to all matters in such independent counsel's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

(1) conducting proceedings before grand juries and other investigations;

(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such independent counsel considers necessary;

(3) appealing any decision of a court in any case or proceeding in which such independent counsel participates in an official capacity;

(4) reviewing all documentary evidence available from any source;

(5) determining whether to contest the assertion of any testimonial privilege;

(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General;

(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case, in the name of the United States; and

(10) consulting with the United States attorney for the district in which any violation of law with respect to which the independent counsel is appointed was alleged to have occurred.

(b) Compensation.—An independent counsel appointed under this chapter shall receive compensation at the per diem rate equal to the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

(c) Additional personnel.—For the purposes of carrying out the duties of an office of independent counsel, such independent counsel may appoint, fix the compensation, and assign the duties of such employees as such independent counsel considers necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate of pay payable for GS-18 of the General Schedule under section 5332 of title 5.

(d) Assistance of Department of Justice.—

(1) In carrying out functions.—An independent counsel may request assistance from the Department of Justice in carrying out the functions of the independent counsel, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such independent counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such independent counsel's duties.

(2) Payment of and reports on expenditures of independent counsel.—The Department of Justice shall pay all costs relating to the establishment and operation of any office of independent counsel. The Attorney General shall submit to the Congress, not later than 30 days after the end of each fiscal year, a report on amounts paid during that fiscal year for expenses of investigations and prosecutions by independent counsel. Each such report shall include a statement of all payments made for activities of independent counsel but may not reveal the identity or prosecutorial jurisdiction of any independent counsel which has not been disclosed under section 593(b)(4).

(e) Referral of other matters to an independent counsel.—An independent counsel may ask the Attorney General or the division of the court to refer to the independent counsel matters related to the independent counsel's prosecutorial jurisdiction, and the Attorney General or the division of the court, as the case may be, may refer such matters. If the Attorney General refers a matter to an independent counsel on the Attorney General's own initiative, the independent counsel may accept such referral if the matter relates to the independent counsel's prosecutorial jurisdiction. If the Attorney General refers any matter to the independent counsel pursuant to the independent counsel's request, or if the independent counsel accepts a referral made by the Attorney General on the Attorney General's own initiative, the independent counsel shall so notify the division of the court.

(f) Compliance with policies of the Department of Justice.—An independent counsel shall, except where not possible, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws.

(g) Dismissal of matters.—The independent counsel shall have full authority to dismiss matters within the independent counsel's prosecutorial jurisdiction without conducting an investigation or at any subsequent time before prosecution, if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

(h) Reports by independent counsel.—**(1) Required reports.—**An independent counsel shall—

(A) file with the division of the court, with respect to the 6-month period beginning on the date of his or her appointment, and with respect to each 6-month period thereafter until the office of that independent counsel terminates, a report which identifies and explains major expenses, and summarizes all other expenses, incurred by that office during the 6-month period with respect to which the report is filed, and estimates future expenses of that office; and

(B) before the termination of the independent counsel's office under section 596(b), file a final report with the division of the court, setting forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such independent counsel.

(2) Disclosure of information in reports.—The division of the court may release to the Congress, the public, or any appropriate person, such portions of a report made under this subsection as the division of the court considers appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a final report filed under paragraph (1)(B) available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to such final report.

(i) Independence from Department of Justice.—Each independent counsel appointed under this chapter, and the persons appointed by that independent counsel under subsection (c), are separate from and independent of the Department of Justice for purposes of sections 202 through 209 of title 18.

(j) Standards of conduct applicable to independent counsel, persons serving in the office of an independent counsel, and their law firms.—

(1) Restrictions on employment while independent counsel and appointees are serving.—(A) During the period in which an independent counsel is serving under this chapter—

(i) such independent counsel, and

(ii) any person associated with a firm with which such independent counsel is associated, may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(B) During the period in which any person appointed by an independent counsel under subsection (c) is serving in the office of independent counsel, such person may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(2) Post employment restrictions on independent counsel and appointees.—(A) Each independent counsel and each person appointed by that independent counsel under subsection (c) may not, for 3 years following the termination of the service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter if that individual was the subject of an investigation or prosecution under this chapter that was conducted by that independent counsel.

(B) Each independent counsel and each person appointed by that independent counsel under subsection (c) may not, for 1 year following the termination of the service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter involving any investigation or prosecution under this chapter.

(3) One-year ban on representation by members of firms of independent counsel.—Any person who is associated with a firm with which an independent counsel is associated or becomes associated after termination of the service of that independent counsel under this chapter may not, for 1 year following such termination, represent any person in any matter involving any investigation or prosecution under this chapter.

(4) Definitions.—For purposes of this subsection—

(A) the term “firm” means a law firm whether organized as a partnership or corporation; and

(B) a person is “associated” with a firm if that person is an officer, director, partner, or other member or employee of that firm.

(k) Custody of records of an independent counsel.—

(1) Transfer of records.—Upon termination of the office of an independent counsel, that independent counsel shall transfer to the Archivist of the United States all records which have been created or received by that office. Before this transfer, the independent counsel shall clearly identify which of these records are subject to rule 6(e) of the Federal Rules of Criminal

Procedure as grand jury materials and which of these records have been classified as national security information. Any records which were compiled by an independent counsel and, upon termination of the independent counsel's office, were stored with the division of the court or elsewhere before the enactment of the Independent Counsel Reauthorization Act of 1987, shall also be transferred to the Archivist of the United States by the division of the court or the person in possession of such records.

(2) Maintenance, use, and disposal of records.—Records transferred to the Archivist under this chapter shall be maintained, used, and disposed of in accordance with chapters 21, 29, and 33 of title 44.

(3) Access to records.—

(A) In general.—Subject to paragraph (4), access to the records transferred to the Archivist under this chapter shall be governed by section 552 of title 5.

(B) Access by Department of Justice.—The Archivist shall, upon written application by the Attorney General, disclose any such records to the Department of Justice for purposes of an ongoing law enforcement investigation or court proceeding, except that, in the case of grand jury materials, such records shall be so disclosed only by order of the court of jurisdiction under rule 6(e) of the Federal Rules of Criminal Procedure.

(C) Exception.—Notwithstanding any restriction on access imposed by law, the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to the records transferred to the Archivist under this chapter.

(4) Records provided by Congress.—Records of an investigation conducted by a committee of the House of Representatives or the Senate which are provided to an independent counsel to assist in an investigation or prosecution conducted by that independent counsel—

(A) shall be maintained as a separate body of records within the records of the independent counsel; and

(B) shall, after the records have been transferred to the Archivist under this chapter, be made available, except as provided in paragraph (3)(B) and (C), in accordance with the rules governing release of the records of the House of Congress that provided the records to the independent counsel.

Subparagraph (B) shall not apply to those records which have been surrendered pursuant to grand jury or court proceedings.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1869, and amended Pub.L. 97-409, §§ 2(a)(1), 6(a)-(c), Jan. 3, 1983, 96 Stat. 2039, 2041; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 100-191, § 2, Dec. 15, 1987, 101 Stat. 1300.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Acts. Senate Report Nos. 95-170 and 95-273, and House Conference Report No. 95-1756, see 1978 U.S.Code Cong. and Adm.News, p. 4216.

1983 Acts. Senate Report No. 97-496, see 1982 U.S.Code Cong. and Adm.News, p. 3537.

1987 Acts. Senate Report No. 100-123, House Conference Report No. 100-452, and Statement by President, see 1987 U.S.Code Cong. and Adm.News, p. 2150.

References in Text

Section 6103 of the Internal Revenue Code of 1986, referred to in subsec. (a)(8), is classified to section 6103 of Title 26, Internal Revenue Code.

The Federal Rules of Criminal Procedure, referred to in subsec. (k)(1), (3)(B), are set out in Title 18, Crimes and Criminal Procedure.

The enactment of the Independent Counsel Reauthorization Act of 1987, referred to in subsec. (k)(1), is the enactment of Pub.L. 100-191, which was approved Dec. 15, 1987.

References in Other Laws to GS-16, 17, or 18 Pay Rates

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [Title I, § 101(c)(1)] of Pub.L. 101-509, set out in a note under section 5376 of Title 5.

Amendments

1987 Amendments. Catchline. Pub.L. 100-191 substituted "an" for "a" preceding "independent counsel".

Subsec. (a). Pub.L. 100-191 added a subsec. (a) heading and re-enacted the existing text substantially without change.

Subsec. (b). Pub.L. 100-191 added a subsec. (b) heading and re-enacted the existing text substantially without change.

Subsec. (c). Pub.L. 100-191 added a subsec. (c) heading and re-enacted the existing text substantially without change.

Subsec. (d). Pub.L. 100-191 added a subsec. (d) heading.

Subsec. (d)(1). Pub.L. 100-191 designated the existing provisions of subsec. (d) as par. (1), re-enacted such provisions substantially without change, and added a par. (1) heading.

Subsec. (d)(2). Pub.L. 100-191 added par. (2).

Subsec. (e). Pub.L. 100-191 added a subsec. (e) heading and re-enacted existing text substantially without change.

Subsec. (f). Pub.L. 100-191 added a subsec. (f) heading and re-enacted existing text without change.

Subsec. (g). Pub.L. 100-191 added a subsec. (g) heading and re-enacted existing text substantially without change.

Subsec. (h) to (k). Pub.L. 100-191 added subsecs. (h) to (k).

1986 Amendments. Subsec. (a)(8). Pub.L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1983 Amendments. Catchline. Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Subsec. (a). Pub.L. 97-409, § 2(a)(1), substituted "independent counsel" for "special prosecutor" wherever appearing and "independent counsel's" for "special prosecutor's".

Subsec. (a)(10). Pub.L. 97-409, § 6(a), added par. (10).

Subsecs. (b), (c). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent

counsel" for "special prosecutor" wherever appearing.

Subsecs. (d), (e). Pub.L. 97-409, § 2(a)(1), substituted "independent counsel" for "special prosecutor" and "independent counsel's" for "special prosecutor's" wherever appearing.

Subsec. (f). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Pub.L. 97-409, § 6(b), substituted "except where not possible" for "to the extent that such special prosecutor deems appropriate" after "shall," and "written or other established policies" for "written policies" after "comply with the".

Subsec. (g). Pub.L. 97-409, § 6(c), added subsec. (g).

Effective Dates

1987 Acts. Amendment by Pub.L. 100-191 effective Dec. 15, 1987, and applicable to proceedings initiated and independent counsels appointed on and af-

ter Dec. 15, 1987, but with the following provisions applicable to previously initiated proceedings pending on Dec. 15, 1987: subsec. (d)(2) (relating to reports by Attorney General on expenditures by independent counsel, except that the first such report shall be made only with respect to expenditures on or after Dec. 15, 1987), subsec. (h)(1)(A) except that the 6-month periods described in subsec. (h)(1)(A) of this section shall be calculated from Dec. 15, 1987, subsec. (i), subsec. (k) of this section, and 90 days after Dec. 15, 1987, subsec. (j), see section 6 of Pub.L. 100-191, set out as a note under section 591 of this title.

1978 Acts. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 604 of Pub.L. 95-521, set out as a note under section 591 of this title.

CROSS REFERENCES

Independent counsel appointed under this chapter included in term "special government employee" for purposes of Chapter 11, Bribery, Graft and Conflict of Interest, see 18 USCA § 202.

LIBRARY REFERENCES

American Digest System

District and prosecuting attorneys; deputies, assistants, and substitutes, see District and Prosecuting Attorneys ¶3(1).

Encyclopedias

District and prosecuting attorneys; deputies, assistants, and substitutes, see C.J.S. District and Prosecuting Attorneys § 27 et seq.

WESTLAW ELECTRONIC RESEARCH

District and prosecuting attorneys cases: 131k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Appeals 2

Appointment of additional personnel 4

Disclosure of information 6

Indictments 3

Investigations 1

Justice Department enforcement policies 5

1. Investigations

Members of Justice Department, who challenged authority or propriety of In-

dependent Counsel's investigation into alleged illegal activity in Department, could do so only after indictment, if any, was returned by grand jury. In re Olson, 1987, 818 F.2d 34, 260 U.S.App.D.C. 168.

2. Appeals

Only special counsel, not Attorney General could appeal for the Government the court's ruling in prosecution governed by the Ethics in Government

Act. U.S. v. North, D.D.C.1989, 713 F.Supp. 1441.

3. Indictments

Consolidation of indictment filed by the Office of Independent Counsel (OIC) charging three defendants with conspiracy and two with submitting false statements to the Department of Housing and Urban Development (DHUD), in connection with grant applications, with Department of Justice indictment charging two defendants with bribery and conspiracy would not subject the OIC to Department of Justice control, and thus would not violate the Ethics in Government Act, under which OIC was appointed. U.S. v. Briscoe, D.D.C.1992, 798 F.Supp. 28.

4. Appointment of additional personnel

Fact that associate independent counsel are appointed by independent counsel and not special court does not invalidate their appointments under the Ethics in Government Act, as staff members of independent counsel, who has inferior officer, are not officers but mere employees of United States. In re Sealed Case, D.D.C.1987, 665 F.Supp. 56, re-

versed 838 F.2d 476, 267 U.S.App.D.C. 178, reversed 108 S.Ct. 2597, 487 U.S. 654, 101 L.Ed.2d 569, on remand 857 F.2d 801, 273 U.S.App.D.C. 10.

5. Justice Department enforcement policies

Dismissal for failure to follow policies of Department of Justice of indictment charging violation of general federal false statement statute and obstruction of Congress was not warranted; very nature of independent counsel's responsibilities suggest that it may not always be possible for him to follow the policies of Department of Justice. U.S. v. Pindexter, D.D.C.1989, 725 F.Supp. 13.

6. Disclosure of information

Even if showing of particularized need was required to authorize release to witness of witness' grand jury testimony in proceeding under Ethics in Government Act, record demonstrated that such need existed; subject matter of witness' testimony was important to investigation, and witness could have been named in independent counsel's public final report. In re Sealed Motion, 1989, 880 F.2d 1367, 279 U.S.App.D.C. 294.

§ 595. Congressional oversight

(a) Oversight of conduct of independent counsel.—

(1) **Congressional oversight.**—The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any independent counsel appointed under this chapter, and such independent counsel shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(2) **Reports to Congress.**—An independent counsel appointed under this chapter shall submit to the Congress such statements or reports on the activities of such independent counsel as the independent counsel considers appropriate.

(b) **Oversight of conduct of Attorney General.**—Within 15 days after receiving an inquiry about a particular case under this chapter, which is a matter of public knowledge, from a committee of the Congress with jurisdiction over this chapter, the Attorney General shall provide the following information to that committee with respect to that case:

(1) When the information about the case was received.

(2) Whether a preliminary investigation is being conducted, and if so, the date it began.

(3) Whether an application for the appointment of an independent counsel or a notification that further investigation is not warranted has been filed with the division of the court, and if so, the date of such filing.

(c) Information relating to impeachment.—An independent counsel shall advise the House of Representatives of any substantial and credible information which such independent counsel receives, in carrying out the independent counsel's responsibilities under this chapter, that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1871, and amended Pub.L. 97-409, § 2(a)(1), Jan. 3, 1983, 96 Stat. 2039; Pub.L. 100-191, § 2, Dec. 15, 1987, 101 Stat. 1304.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Acts. Senate Report Nos. 95-170 and 95-273, and House Conference Report No. 95-1756, see 1978 U.S.Code Cong. and Adm.News, p. 4216.

1983 Acts. Senate Report No. 97-496, see 1982 U.S.Code Cong. and Adm.News, p. 3537.

1987 Acts. Senate Report No. 100-123, House Conference Report No. 100-452, and Statement by President see 1987 U.S.Code Cong. and Adm.News, p. 2150.

Amendments

1987 Amendments. Catchline. Pub.L. 100-191 substituted "Congressional oversight" for "Reporting and congressional oversight".

Subsec. (a). Pub.L. 100-191 added subsec. (a) heading and, in text, added par. (1) and designated existing provisions as par. (2), and in par. (2), as so designated, deleted provisions authorizing the independent counsel to make public from time to time statements or reports on the independent counsel's activities.

Subsec. (b). Pub.L. 100-191 substituted provisions requiring the Attorney General to respond to inquiries by Congress conducting oversight of the independent counsel process for former provisions which required the independent

counsel to submit a report describing the work of the independent counsel, and authorized the court to release to the Congress, the public, or to any appropriate person, appropriate portions of the report.

Subsec. (c). Pub.L. 100-191 added subsec. (c) heading and, in text, re-enacted existing provisions adding requirement that the independent counsel receive information as part of the independent counsel's activities in carrying out the independent counsel's responsibilities under this chapter.

Subsec. (d). Pub.L. 100-191 struck out subsec. (d) which related to Congressional oversight jurisdiction of official conduct of the independent counsel.

Subsec. (e). Pub.L. 100-191 struck out subsec. (e), which had provided that a majority of majority party members or a majority of all nonmajority party members of the Committee on the Judiciary of either House of the Congress could request in writing that the Attorney General apply for the appointment of an independent counsel, that not later than thirty days after the receipt of such a request, or not later than fifteen days after the completion of a preliminary investigation of the matter with respect to which the request was made, whichever was later, the Attorney General had to

provide written notification of any action the Attorney General had taken in response to such request and, if no application had been made to the division of the court, why such application had not been made, and that such written notification was to be provided to the committee on which the persons making the request served, and provided for confidential treatment of such notification.

1983 Amendments. Pub.L. 97-409, § 2(a)(1), substituted "independent counsel" for "special prosecutor" and "independent counsel's" for "special prosecutor's" wherever appearing.

Effective Dates

1987 Acts. Amendment by Pub.L. 100-191 effective Dec. 15, 1987, and applicable to proceedings initiated and independent counsels appointed on and after Dec. 15, 1987, see section 6 of Pub.L. 100-191, set out as a note under section 591 of this title.

1978 Acts. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 604 of Pub.L. 95-521, set out as a note under section 591 of this title.

LIBRARY REFERENCES

American Digest System

District and prosecuting attorneys; deputies, assistants, and substitutes, see District and Prosecuting Attorneys §3(1).

Encyclopedias

District and prosecuting attorneys; deputies, assistants, and substitutes, see C.J.S. District and Prosecuting Attorneys § 27 et seq.

WESTLAW ELECTRONIC RESEARCH

District and prosecuting attorneys cases: 131k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Impeachment 1

1. Impeachment

Neither special division nor independent counsel have any authority to im-

peach anyone; if independent counsel receives information that may constitute grounds for impeachment, he or she is to advise House of Representatives. In re Visser, 1992, 968 F.2d 1319, 297 U.S.App.D.C. 37.

§ 596. Removal of an independent counsel; termination of office

(a) Removal; report on removal.—

(1) Grounds for removal.—An independent counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical disability, mental incapacity, or any other condition that substantially impairs the performance of such independent counsel's duties.

(2) Report to division of the court and Congress.—If an independent counsel is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the

ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report. The division of the court may release any or all of such report in accordance with section 594(h)(2).

(3) Judicial review of removal.—An independent counsel removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia. A member of the division of the court may not hear or determine any such civil action or any appeal of a decision in any such civil action. The independent counsel may be reinstated or granted other appropriate relief by order of the court.

(b) Termination of office.—

(1) Termination by action of independent counsel.—An office of independent counsel shall terminate when—

(A) the independent counsel notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions; and

(B) the independent counsel files a final report in compliance with section 594(h)(1)(B).

(2) Termination by division of the court.—The division of the court, either on its own motion or upon the request of the Attorney General, may terminate an office of independent counsel at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of such termination, the independent counsel shall file the final report required by section 594(h)(1)(B).

(c) Audits.—After the termination of the office of an independent counsel, the Comptroller General shall conduct an audit of the

expenditures of that office, and shall submit to the appropriate committees of the Congress a report on the audit.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1872, and amended Pub.L. 97-409, §§ 2(a)(1), 6(d), Jan. 3, 1983, 96 Stat. 2039, 2042; Pub.L. 98-620, Title IV, § 402(29)(A), Nov. 8, 1984, 98 Stat. 3359; Pub.L. 100-191, § 2, Dec. 15, 1987, 101 Stat. 1304.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Acts. Senate Report Nos. 95-170 and 95-273, and House Conference Report No. 95-1756, see 1978 U.S.Code Cong. and Adm.News, p. 4216.

1983 Acts. Senate Report No. 97-496, see 1982 U.S.Code Cong. and Adm.News, p. 3537.

1984 Acts. House Report No. 98-1062, see 1984 U.S.Code Cong. and Adm.News, p. 5708.

1987 Acts. Senate Report No. 100-123, House Conference Report No. 100-452, and Statement by President, see 1987 U.S.Code Cong. and Adm.News, p. 2150.

Amendments

1987 Amendments. Catchline. Pub.L. 100-191 substituted "an independent counsel" for "a independent counsel".

Subsec. (a). Pub.L. 100-191 added subsec. (a) heading.

Subsec. (a)(1). Pub.L. 100-191 added a par. (1) heading and re-enacted the text substantially without change.

Subsec. (a)(2). Pub.L. 100-191 added par. (2) heading and re-enacted the text substantially without change.

Subsec. (a)(3). Pub.L. 100-191 added par. (3) heading and re-enacted the text substantially without change save for the substitution of "the United States District Court for the District of Columbia" for "the division of the court" as the tribunal for judicial review of the removal.

Subsec. (b). Pub.L. 100-191 added subsec. (b) heading.

Subsec. (b)(1). Pub.L. 100-191 added par. (1) heading and re-enacted the text substantially without change.

Subsec. (b)(2). Pub.L. 100-191 added par. (2) heading and re-enacted the text substantially without change.

Subsec. (c). Pub.L. 100-191 added subsec. (c).

1984 Amendments. Subsec. (a)(3). Pub.L. 98-620 struck out provision requiring the division of the court to cause such an action to be in every way expedited.

1983 Amendments. Catchline. Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Subsec. (a)(1). Pub.L. 97-409, § 2(a)(1), (6)(d), substituted "independent counsel" for "special prosecutor", "independent counsel's" for "special prosecutor's", and "good cause" for "extraordinary impropriety".

Subsecs. (a)(2) (3), (b). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Effective Dates

1987 Acts. Amendment by Pub.L. 100-191 effective Dec. 15, 1987, and applicable to proceedings initiated and independent counsels appointed on and after Dec. 15, 1987, but with subsecs. (a)(3) and (c) applicable to previously initiated proceedings pending on Dec. 15, 1987, see section 6 of Pub.L. 100-191, set out as a note under section 591 of this title.

1984 Acts. Amendment by Pub.L. 98-620 not to apply to cases pending on Nov. 8, 1984, see section 403 of Pub.L. 98-620, set out as a note under section 1657 of this title.

1978 Acts. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 604 of Pub.L. 95-521, set out as a note under section 591 of this title.

LIBRARY REFERENCES

American Digest System

Attorney general; powers and duties in general, see Attorney General § 6.

Encyclopedias

Attorney general; powers and duties in general, see C.J.S. Attorney General § 7.

WESTLAW ELECTRONIC RESEARCH

Attorney general cases: 46k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Constitutionality**Generally 1****Ripeness 3****Separation of powers 2****Ripeness, constitutionality 3****Separation of powers, constitutionality 2****1. Constitutionality—Generally**

Provision in Ethics in Government Act giving Special Division power to terminate office of independent counsel does not violate Article III prohibition against judicial exercise of executive power in that such termination may occur only when duties of counsel are completed or so substantially completed that there is no need for any continued action by independent counsel. *Morrison v. Olson*, Dist.Col.1988, 108 S.Ct. 2597, 487 U.S. 654, 101 L.Ed.2d 569, on remand 857 F.2d 801, 273 U.S.App.D.C. 10.

2. — Separation of powers

Ethics in Government Act restricting Attorney General's power to remove independent counsel to only those instances in which he can show "good cause" does not impermissibly interfere with

President's exercise of his constitutionally appointed functions, in violation of separation of powers doctrine; independent counsel is inferior officer under appointments clause and President's need to control counsel is not so essential to functioning of Executive Branch as to require as matter of constitutional law that counsel be terminable at will by President. *Morrison v. Olson*, Dist.Col. 1988, 108 S.Ct. 2597, 487 U.S. 654, 101 L.Ed.2d 569, on remand 857 F.2d 801, 273 U.S.App.D.C. 10.

3. — Ripeness

Issue of whether any aspect of relationship between special division of the Court of Appeals and the Independent Counsel violated Constitution was not ripe where same individual who had been appointed as independent counsel by the special division had also been appointed as an independent counsel by the Attorney General and given the same authority. *In re Sealed Case*, 1987, 829 F.2d 50, 264 U.S.App.D.C. 265, certiorari denied 108 S.Ct. 753, 484 U.S. 1027, 98 L.Ed.2d 765.

§ 597. Relationship with Department of Justice

(a) **Suspension of other investigations and proceedings.**—Whenever a matter is in the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel under section 594(e), the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d)(1), and except insofar as such independent counsel agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

(b) **Presentation as amicus curiae permitted.**—Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which an independent counsel participates in an official capacity or any appeal of such a case or proceeding.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1872, and amended Pub.L. 97-409, § 2(a)(1)(A), Jan. 3, 1983, 96 Stat. 2039; Pub.L. 100-191, § 2, Dec. 15, 1987, 101 Stat. 1306.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Acts. Senate Report Nos. 95-170 and 95-273, and House Conference Report No. 95-1756, see 1978 U.S.Code Cong. and Adm.News, p. 4216.

1983 Acts. Senate Report No. 97-496, see 1982 U.S.Code Cong. and Adm.News, p. 3537.

1987 Acts. Senate Report No. 100-123, House Conference Report No. 100-452, and Statement by President, see 1987 U.S.Code Cong. and Adm.News, p. 2150.

Amendments

1987 Amendments. Subsec. (a). Pub.L. 100-191 added subsec. (a) heading and re-enacted the text substantially without change.

Subsec. (b). Pub.L. 100-191 added subsec. (b) heading and re-enacted the text substantially without change.

1983 Amendments. Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Effective Dates

1987 Acts. Amendment by Pub.L. 100-191 effective Dec. 15, 1987, and applicable to proceedings initiated and independent counsels appointed on and after Dec. 15, 1987, section 6 of Pub.L. 100-191, set out as a note under section 591 of this title.

1978 Acts. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 604 of Pub.L. 95-521, set out as a note under section 591 of this title.

LIBRARY REFERENCES

American Digest System

Attorney general; powers and duties in general, see Attorney General ¶6.

Encyclopedias

Attorney general; powers and duties in general, see C.J.S. Attorney General § 7.

WESTLAW ELECTRONIC RESEARCH

Attorney general cases: 46k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Suspension of Investigation 1

1. Suspension of Investigation

Attorney General's delegation to independent counsel whom he appointed of investigative and prosecutorial functions and powers did not violate Ethics Act requirement that Attorney General and

the Department of Justice suspend all investigations when a matter is in the prosecutorial jurisdiction of an independent counsel appointed by special division of the Court of Appeals under the Ethics Act, where person appointed independent counsel by the Attorney General was the same person who had been appointed under the Ethics Act, so that his

Note 1

signing of appointment form constituted an agreement in writing that the Justice Department investigation could continue. In re Sealed Case, 1987, 829 F.2d 50,

264 U.S.App.D.C. 265, certiorari denied 108 S.Ct. 753, 484 U.S. 1027, 98 L.Ed.2d 765.

§ 598. Severability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1873, and amended Pub.L. 97-409, §§ 2(a)(1)(A), 7, Jan. 3, 1983, 96 Stat. 2039, 2042; Pub.L. 100-191, § 2, Dec. 15, 1987, 101 Stat. 1306.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Acts. Senate Report Nos. 95-170 and 95-273, and House Conference Report No. 95-1756, see 1978 U.S.Code Cong. and Adm.News, p. 4216.

1983 Acts. Senate Report No. 97-496, see 1982 U.S.Code Cong. and Adm.News, p. 3537.

1987 Acts. Senate Report No. 100-123, House Conference Report No. 100-452, and Statement by President, see 1987 U.S.Code Cong. and Adm.News, p. 2150.

Amendments

1987 Amendments. Pub.L. 100-191 substituted provisions relating to the severability of the provisions of this chapter for former provisions which had related to the termination of this chapter. Provisions covering the termination of this chapter were transferred to section 599 of this title.

1983 Amendments. Pub.L. 97-409, § 2(a)(1)(A), substituted "independent

counsel" for "special prosecutor" wherever appearing.

Pub.L. 97-409, § 7, substituted reference to the date of enactment of the Ethics in Government Act Amendments of 1982 for reference to the date of enactment of this chapter.

Effective Dates

1987 Acts. Amendment by Pub.L. 100-191 effective Dec. 15, 1987, and to apply only to new independent counsel proceedings and to new independent counsels coming into existence on and after Dec. 15, 1987, see section 6 of Pub.L. 100-191, set out as a note under section 591 of this title.

1978 Acts. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 604 of Pub.L. 95-521, set out as a note under section 591 of this title.

LIBRARY REFERENCES

American Digest System

Effect of partial invalidity of statute in general, see Statutes ¶64(1).

Encyclopedias

Effect of partial invalidity of statute in general, see C.J.S. Statutes § 92.

WESTLAW ELECTRONIC RESEARCH

Statutes cases: 361k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 599. Termination of effect of chapter

This chapter shall cease to be effective five years after the date of the enactment of the Independent Counsel Reauthorization Act of 1987, except that this chapter shall continue in effect with respect to then pending matters before an independent counsel that in the judgment of such counsel require such continuation until that independent counsel determines such matters have been completed.

(Added Pub.L. 100-191, § 2, Dec. 15, 1987, 101 Stat. 1306.)

HISTORICAL AND STATUTORY NOTES**Revision Notes and Legislative Reports**

1987 Acts. Senate Report No. 100-123, House Conference Report No. 100-452, and Statement by President, see 1987 U.S.Code Cong. and Adm.News, p. 2150.

1987, referred to in text, is the date of the enactment of Pub.L. 100-191, which was approved Dec. 15, 1987.

Effective Dates

1987 Acts. Section effective Dec. 15, 1987, see section 6 of Pub.L. 100-191, set out as a note under section 591 of this title.

References in Text

The date of the enactment of the Independent Counsel Reauthorization Act of

LIBRARY REFERENCES**American Digest System**

Statutes; repeal, suspension, expiration, and revival, see Statutes §149 et seq.

Encyclopedias

Statutes; repeal, suspension, and revival, see C.J.S. Statutes § 278 et seq.

WESTLAW ELECTRONIC RESEARCH

Statutes cases: 361k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.